

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6430

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

EMMETT MADISON GRAHAM, JR.,

Defendant - Appellant.

No. 04-6807

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

EMMETT MADISON GRAHAM, JR.,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Fox, Senior District Judge. (CR-97-98; CA-03-53-7-F; CA-00-206-F)

Submitted: July 26, 2004

Decided: August 10, 2004

Before LUTTIG and MOTZ, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

No. 04-6430 dismissed; No. 04-6807 affirmed by unpublished per
curiam opinion.

Emmett Madison Graham, Jr., Appellant Pro Se. Michael Gordon,
James, Assistant United States Attorney, Paul Martin Newby, OFFICE
OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Emmett Madison Graham, Jr., seeks to appeal the district court's orders denying relief on his motion filed under 28 U.S.C. § 2255 (2000), denying a certificate of appealability, and denying a motion for return of property in a criminal case. An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Graham has not made the requisite showing. Accordingly, we deny Graham's motion for a certificate of appealability and dismiss the appeal in 04-6430. The district court order appealed from in 04-6807, regarding the motion for return of property in a criminal case, is affirmed. The district court properly denied Graham's motion for return of property because the issue was previously decided by the district court and is pending on appeal. We dispense with oral argument

because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 04-6430 DISMISSED
No. 04-6807 AFFIRMED