

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6547

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

AUDLEY CASANOVA, a/k/a Robert King,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Winston-Salem. Frank W. Bullock, Jr., District Judge. (CR-95-108; CA-04-106-1)

Submitted: August 9, 2004

Decided: August 27, 2004

Before NIEMEYER, KING, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Audley Casanova, Appellant Pro Se. Clifton Thomas Barrett, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Audley Casanova appeals a district court's order accepting a magistrate judge's recommendation to construe his "motion to supplement" as a 28 U.S.C. § 2255 (2000) motion and dismissing it as successive, noting that Casanova has not obtained authorization from this court to file such a motion. An appeal may not be taken from the final order in a § 2255 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, 338 (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 Casanova has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss this appeal. We dispense with oral argument because the facts and legal contentions

*See Reid v. Angelone, 369 F.3d 363, 367-70 (4th Cir. 2004) (holding that order denying relief under Fed. R. Civ. P. 60(b) in a habeas setting is "the final order in a habeas corpus proceeding" subject to the certificate of appealability requirement of 28 U.S.C. § 2253(c)(1)(A) (2000)).

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

DISMISSED