

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6659

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MARION PROMISE, a/k/a Mario,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Chief District Judge. (CR-98-7-MU)

Submitted: August 9, 2004

Decided: October 28, 2004

Before LUTTIG, WILLIAMS, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Marion Promise, Appellant Pro Se. Gretchen C. F. Shappert, United States Attorney, Charlotte, North Carolina; Nina Swift Goodman, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Marion Promise, a federal prisoner, seeks to appeal the district court's order denying relief on his motion to file a belated appeal from the court's denial of his motion to extend the one-year limitations period in 28 U.S.C. § 2255 ¶ 6 (2000), and the order denying his motion filed under Fed. R. Civ. P. 59(e). The orders are not appealable 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 Promise has not made the requisite showing. Although we find that the district court's reliance on the Federal Rules of Appellate Procedure applicable to criminal cases is debatable or wrong, see United States v. Hayman, 342 U.S. 205, 209 n.4 (1952) ("Appeals from orders denying motions under Section 2255 are governed by the civil rules applicable to appeals from final

judgments in habeas corpus actions."), Promise has failed to demonstrate a substantial showing of the denial of a constitutional right. Accordingly, we deny a certificate of appealability and dismiss the 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.

DISMISSED