

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6739

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

FLOYD GADSON,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Richard L. Voorhees, District Judge. (CR-93-33-MU; CA-03-482-3)

Submitted: November 4, 2004

Decided: November 9, 2004

Before WILKINSON, MOTZ, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Floyd Gadson, Appellant Pro Se. Gretchen C.F. Shappert, United States Attorney, Jennifer Marie Hoefling, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Floyd Gadson seeks to appeal the district court's orders construing his Writ of Audita Querela as a motion under 28 U.S.C. § 2255 (2000) and dismissing it as successive, and denying his motion to alter or amend judgment filed pursuant to 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); see Reid v. Angelone, 369 F.3d 363, 368-69, 374 n.7 (4th Cir. 2004). 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, 336-38 (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 Gadson has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.

Additionally, we construe Gadson's notice of appeal and informal brief on appeal as an application to file a second or successive § 2255 motion. See United States v. Winestock, 340 F.3d 200, 208 (4th Cir.), cert. denied, 124 S. Ct. 496 (2003). We note

that Gadson seeks to assert a claim based upon Apprendi v. New Jersey, 530 U.S. 466 (2000), which is identical to the claim he sought to raise in a previous motion under § 2244, which was denied. In re Gadson, No. 00-778 (4th Cir. Sept. 20, 2000) (unpublished order). Accordingly, we decline to authorize Gadson to file a successive § 2255 motion. In re Williams, 364 F.3d 235, 240 (4th Cir. 2004). 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