

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6746

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MCKINLEY DAVID LITTLEJOHN,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Bryson City. Lacy H. Thornburg,
District Judge. (CR-98-234)

Submitted: July 15, 2004

Decided: July 23, 2004

Before MOTZ, KING, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

McKinley David Littlejohn, Appellant Pro Se. Thomas Richard Ascik,
OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina,
for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

McKinley David Littlejohn seeks to appeal the district court's order construing his motion noting an alleged defect in the indictment as an unauthorized second or successive 28 U.S.C. § 2255 (2000) motion. The order is 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 Littlejohn has not made the requisite showing. 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