

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7238

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID J. MERRITT,

Defendant - Appellant.

No. 04-7248

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID J. MERRITT,

Defendant - Appellant.

No. 04-7415

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID J. MERRITT,

Defendant - Appellant.

No. 04-7416

UNITED STATES OF AMERICA,

Petitioner - Appellee,

versus

DAVID J. MERRITT,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Newport News. Raymond A. Jackson, District Judge. (CR-98-6; CR-97-43)

Submitted: January 13, 2005

Decided: January 19, 2005

Before WIDENER, NIEMEYER, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David J. Merritt, Appellant Pro Se. Michael R. Smythers, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

David Juan Merritt, a federal prisoner, seeks to appeal the district court's orders denying relief on his Federal Rule of Civil Procedure 60(b) motion for reconsideration, which was construed as a successive 28 U.S.C. § 2255 (2000) motion, and denying his motion to proceed in forma pauperis on appeal. 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 Merritt has not made the requisite showing. Accordingly, we deny certificates of appealability, deny permission to proceed in forma pauperis, and dismiss the appeals.

Additionally, we construe Merritt's notices 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, 540 U.S. 995 (2003). In order to obtain authorization to file a successive § 2255 motion, a prisoner must assert claims based on either: (1) a new rule of constitutional law, previously unavailable, made retroactive by the Supreme Court to cases on collateral review; or (2) newly discovered evidence that would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense. 28 U.S.C. §§ 2244(b)(2), 2255 (2000). Merritt's claim does not satisfy either of these conditions. Therefore, we decline to authorize Merritt to file a successive § 2255 motion. 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