

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 04-7331**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KALVIN MARSHALL,

Defendant - Appellant.

---

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (CR-02-225; CA-03-1016-3)

---

Submitted: December 16, 2004

Decided: December 22, 2004

---

Before MICHAEL, KING, and SHEDD, Circuit Judges.

---

Dismissed by unpublished per curiam opinion.

---

Kalvin Marshall, Appellant Pro Se. Michael Cornell Wallace, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Kalvin Marshall seeks to appeal the district court's order denying relief on his motion under 28 U.S.C. § 2255 (2000). We have independently reviewed the record and conclude that Marshall has not made a substantial showing of the denial of a constitutional right. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Accordingly, we deny a certificate of appealability and dismiss the appeal.\* See 28 U.S.C. § 2253(c) (2000). 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

---

\*We decline to consider the issues Marshall has raised for the first time in his informal brief that were not first presented to the district court. With regard to Marshall's claim pursuant to the recent Supreme Court case of Blakely v. Washington, 124 S. Ct. 2531 (2004), even if properly before this court for consideration, Blakely would offer Marshall no relief because, inter alia, the Supreme Court has not made its ruling in Blakely retroactive to cases on collateral review. See In re Dean, 375 F.3d 1287, 1290 (11th Cir. 2004); see also United States v. Sanders, 247 F.3d 139, 151 (4th Cir. 2001) (holding that the rule announced in Apprendi v. New Jersey, 530 U.S. 466 (2000), the precursor to Blakely, is not retroactively applicable to cases on collateral review).