

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-8015**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RENE AGUILAR, JR.,

Defendant - Appellant.

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**No. 05-7099**

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In Re: RENE AGUILAR, JR.,

Movant.

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Appeals from the United States District Court for the Western  
District of North Carolina, at Charlotte. Graham C. Mullen, Chief  
District Judge. (CR-99-204-MU; CA-04-395-3-2-MU)

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Submitted: January 4, 2006

Decided: January 30, 2006

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Before WILKINSON, LUTTIG, and TRAXLER, Circuit Judges.

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No. 04-8015 dismissed; No. 05-7099 petition denied by unpublished  
per curiam opinion.

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Rene Aguilar, Jr., Appellant Pro Se. Douglas Scott Broyles,  
Assistant United States Attorney, Charlotte, North Carolina, for  
Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

In these consolidated cases, Rene Aguilar, Jr., seeks to appeal the district court's order denying as untimely his motion filed under 28 U.S.C. § 2255 (2000), and petitions this court for writ of audita querela. 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, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Aguilar has not made the requisite showing.\*

Turning to Aguilar's petition for writ of audita querela, we find that because § 2255 exists as a vehicle for collaterally

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\*We note that Aguilar's reliance on the Supreme Court's recent decision in Crawford v. Washington, 541 U.S. 36 (2004), is misplaced, as that case is inapplicable to the sentencing claims Aguilar sought to raise in his motion. See United States v. Roche, 415 F.3d 614, 617 (7th Cir.), cert. denied, 2005 WL 3027861 (U.S. Nov. 14, 2005) (No. 05-7031); United States v. Martinez, 413 F.3d 239, 242 (2d Cir. 2005).

attacking a conviction or sentence, the use of an extraordinary writ for the same purpose is inappropriate.

Accordingly, in appeal number 04-8015, we deny a certificate of appealability and dismiss the appeal. In appeal number 05-7099, we grant the application to proceed on appeal in forma pauperis, but deny the petition for writ of audita querela. 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.

04-8015 DISMISSED  
05-7099 PETITION DENIED