

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6122

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JEROME WALDEN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, Chief District Judge. (CR-95-63)

Submitted: May 20, 2005

Decided: September 7, 2005

Before LUTTIG, MOTZ, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jerome Walden, Appellant Pro Se. David John Novak, 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Unpublished opinions are not binding precedent in this circuit.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:

Jerome Walden seeks to appeal the district court's order denying relief on his motion under Fed. R. Civ P. 60(b) following denial of his 28 U.S.C. § 2255 (2000) motion. An appeal may not be taken from the final order in a § 2255 proceeding 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, 370 (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 (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 Walden has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.

In accordance with United States v. Winestock, 340 F.2d 200, 206-08 (4th Cir.), cert. denied, 124 S. Ct. 496 (2003), we have also construed Walden's notice of appeal and informal brief as an application for authorization to file a successive § 2255 motion under 28 U.S.C. § 2244 (2000). We deny such authorization because

Walden does not allege newly discovered evidence or a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court. Id.

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