

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7085

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANTONIO GERARDO DOUGLAS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (CR-97-184; CA-94-971)

Submitted: November 17, 2005

Decided: November 28, 2005

Before WILKINSON, LUTTIG, and WILLIAMS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Antonio Gerardo Douglas, Appellant Pro Se. William Neil Hammerstrom, Jr., Gavin Alexander Corn, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Antonio G. Douglas seeks to appeal the district court's order dismissing as successive 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). 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 the district court's assessment of his constitutional claims is 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). As Douglas notes, the present motion is not successive because his prior § 2255 motion was dismissed without prejudice. See In re Goddard, 170 F.3d 435, 438 (4th Cir. 1999). However, because the claims in Douglas' second § 2255 motion are foreclosed by our decision in United States v. Morris, ___F.3d ___, 2005 WL 295 0732 (4th Cir. Nov. 7, 2005), Douglas has not made the requisite showing under § 2253(c)(2). 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