

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7265

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

GREGORY MCGAIL GARDNER,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis III, District Judge. (CR-99-443; CA-05-619-1)

Submitted: January 19, 2006

Decided: January 25, 2006

Before WILKINSON, TRAXLER, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Gregory McGail Gardner, Appellant Pro Se. Eugene Joseph Rossi, 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Unpublished opinions are not binding precedent in this circuit.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:

Gregory McGail Gardner, a federal prisoner, seeks to appeal the district court's order denying his motion under 28 U.S.C. § 2255 (2000) as both time-barred and without merit. 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 the district court's assessment of his constitutional claims 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 Gardner has not made the requisite showing. 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