

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7551

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

LEROY RICARDO SMALLS,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Patrick Michael Duffy, District Judge. (CR-03-225; CA-05-960-2-PMD)

Submitted: November 22, 2005

Decided: December 7, 2005

Before MOTZ, TRAXLER, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Leroy Ricardo Smalls, Appellant Pro Se. John Charles Duane, Assistant United States Attorney, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Leroy Ricardo Smalls seeks to appeal the district court's order denying relief on his motion filed under 28 U.S.C. § 2255 (2000), and the district court's denial of his motion for a certificate of appealability. 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 for claims addressed by the district court on the merits absent "a substantial showing fo the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). We have independently reviewed the record and conclude that Smalls has not made the requisite showing. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). 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