

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7675

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL ANTHONY CARTER,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Frank W. Bullock, Jr., District Judge. (CR-00-64; CA-04-1018-1)

Submitted: February 23, 2006

Decided: March 6, 2006

Before WIDENER, NIEMEYER, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Michael Anthony Carter, Appellant Pro Se. Angela Hewlett Miller, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Michael Anthony Carter seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing as untimely his motion filed under 28 U.S.C. § 2255 (2000).^{*} 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 both that the district court's assessment of the constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. 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 Carter 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

^{*}Carter's Fed. R. Crim. P. 33 motion was dismissed without prejudice in August 2004, and he did not appeal. He subsequently filed a § 2255 motion, and the dismissal of this motion is the subject of the present appeal.

presented in the materials before the court and argument would not aid the decisional process.

DISMISSED