

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7897

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

GERARD VALMORE BROWN,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Winston-Salem. N. Carlton Tilley, Jr., Chief District Judge. (CR-93-281; CA-05-885-1)

Submitted: April 27, 2006

Decided: May 4, 2006

Before NIEMEYER and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Gerard Valmore Brown, Appellant Pro Se. Robert Michael Hamilton, 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Unpublished opinions are not binding precedent in this circuit.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:

Gerald Valmore Brown, a federal prisoner, seeks to appeal from the district court's order construing his petition for a writ of error coram nobis as a motion under 28 U.S.C. § 2255 (2000), and dismissing it as a successive motion for which authorization had not been obtained. We find that the district court properly construed the motion as one under § 2255. See Raines v. United States, 423 F.2d 526, 528 & n.1 (4th Cir. 1970); see also Gonzalez v. Crosby, 125 S. Ct. 2641, 2647 (2005) (where a motion is "in substance a successive habeas petition," it "should be treated accordingly").

Because Brown's petition was properly construed as a § 2255 motion, the order dismissing the motion is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000); Jones v. Braxton, 392 F.3d 683 (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 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). We have independently reviewed the record and conclude that Brown 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