

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6570

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BRIAN ARDEN RICHMOND,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. David A. Faber, Chief District Judge. (5:99-cr-00239; 5:03-cv-00076)

Submitted: June 15, 2006

Decided: June 21, 2006

Before KING, SHEDD, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Brian Arden Richmond, Appellant Pro Se. Michael Lee Keller, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Brian Arden Richmond seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2255 (2000) motion. 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 that any assessment of the constitutional claims by the district court 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 Richmond has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. See United States v. Morris, 429 F.3d 65 (4th Cir. 2005) (holding that the relief discussed in United States v. Booker, 543 U.S. 220 (2005), is not available on collateral review to prisoners whose convictions became final before Booker was decided). 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