

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-7062

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

EARNEST MCARN,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Florence. Cameron McGowan Currie, District Judge. (4:94-cr-00083-CMC-9; 4:06-cv-01597-CMC)

Submitted: October 31, 2006

Decided: November 6, 2006

Before WILLIAMS, MICHAEL, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Earnest McArn, Appellant Pro Se. William Earl Day, II, Assistant United States Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Earnest McArn seeks to appeal from the district court's order construing his motion for reduction of his sentence as a motion under 28 U.S.C. § 2255 (2000), and denying relief because it was a successive § 2255 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, 545 U.S. 524, ___, 125 S. Ct. 2641, 2647 (2005) (where a motion is "in substance a successive habeas petition," it "should be treated accordingly").

Because McArn's motion 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 or wrong and that any dispositive procedural rulings by the district court are likewise debatable. 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 McArn 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