

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-7085

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID J. MERRITT,

Defendant - Appellant.

No. 06-7086

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID J. MERRITT,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Newport News. Raymond A. Jackson, District Judge. (4:97-cr-00043; 4:01-cv-00016; 4:98-cr-00006; 4:01-cv-00015)

Submitted: October 17, 2006

Decided: October 23, 2006

Before NIEMEYER, KING, and DUNCAN, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

David J. Merritt, Appellant Pro Se. Michael R. Smythers, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

David J. Merritt seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2255 (2000) and 18 U.S.C. § 3582(c)(2) (2000) motions and his motions for reconsideration of the denial of his § 2255 motion. Because the motions sought to attack sentences in two criminal proceedings, the district court recorded the motions in two separate cases, but dealt with them in an identical manner. The district court docketed Merritt's notice of appeal in both cases, and the two appeals from identical district court orders have been consolidated in this court.

The orders denying the § 2255 motion and the motions for reconsideration are 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 Merritt has not

made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss this portion of the appeals.

Regarding the denial of Merritt's § 3582 motion, we have reviewed the record and found no reversible error. Accordingly, we affirm the relevant portion of the district court's order for the reasons stated by the district court. United States v. Merritt, No. 4:97-cr-00043; 4:01-cv-00016; 4:98-cr-0006; 4:01-cv-00015 (E.D. Va. Mar. 22 & Apr. 27, 2006). We deny Merritt's motion for appointment of counsel. 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.

AFFIRMED IN PART;
DISMISSED IN PART