

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8087

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID PEREZ-GARCIA,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Lyle E. Strom, Senior District Judge. (3:01-cr-00036-RLV-1; 3:04-cv-00429-LES)

Submitted: March 17, 2009

Decided: March 20, 2009

Before TRAXLER, KING, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David Perez-Garcia, Appellant Pro Se. Gretchen C.F. Shappert, United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Perez-Garcia seeks to appeal the district court's order construing his Fed. R. Civ. P. 15(c)(2) motion as a successive 28 U.S.C.A. § 2255 (West Supp. 2008) motion and denying relief. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006). 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) (2006). 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 Perez-Garcia 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