

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6056

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LACY DAVIS, III, a/k/a Lacey Davis, 3,

Defendant - Appellant.

No. 09-6241

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LACY DAVIS, III, a/k/a Lacey Davis, 3,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:94-cr-00411-CMH-1; 1:05-cv-01425-CMH)

Submitted: July 1, 2009

Decided: July 20, 2009

Before KING and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Lacy Davis, III, Appellant Pro Se. Leslie Bonner McClendon,
Assistant United States Attorney, Alexandria, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lacy Davis, III, seeks to appeal the district court's orders denying his motion to amend his 28 U.S.C.A. § 2255 (West Supp. 2008) motion. The orders are 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 Davis has not made the requisite showing. The district court dismissed Davis's § 2255 motion as untimely and successive, deficiencies that an amendment could not cure. Therefore, the district court did not have the discretion to grant the motion to amend. See Laber v. Harvey, 438 F.3d 404, 427 (4th Cir. 2006) (explaining district courts should deny motions to amend on the bases of prejudice, bad faith, and futility). 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