

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6170

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CLEVELAND MCLEAN, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Robert G. Doumar, Senior District Judge. (2:90-cr-00105; 2:08-cv-00588)

Submitted: July 30, 2009

Decided: August 4, 2009

Before MOTZ, KING, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Cleveland McLean, Jr., Appellant Pro Se. Charles Philip Rosenberg, Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Cleveland McLean, Jr., seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2009) motion. 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 McLean has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny McLean's motion for attorney's fees, and dismiss the appeal. To the extent McLean sought to file an 18 U.S.C. § 3582(c)(2) (2006) motion for reduction of sentence pursuant to amendments to the Sentencing Guidelines, this decision is without prejudice to the filing of such a motion in district court. 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