

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6817

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DOROTHY ANN OILER,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. Thomas E. Johnston, District Judge. (5:06-cr-00098-2; 5:08-cv-00995)

Submitted: September 29, 2009

Decided: October 7, 2009

Before NIEMEYER, MICHAEL, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Dorothy Ann Oiler, Appellant Pro Se. John Lanier File, Assistant United States Attorney, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dorothy Ann Oiler seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing her 28 U.S.C.A. § 2255 (West Supp. 2009) motion as untimely. 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 Oiler has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We deny Oiler's motion for conditional release pending 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