

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-7967

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL BURGESS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, District Judge. (CR-88-233-A, CA-92-1816-AM)

Submitted: September 10, 1996 Decided: September 19, 1996

Before HALL, MURNAGHAN, and HAMILTON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael Burgess, Appellant Pro Se. Robert Clifford Chesnut, Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Michael Anthony Burgess appeals from the district court's order denying his motion for relief under 28 U.S.C. § 2255 (1994), as amended by Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214. In a prior appeal, this court vacated and remanded to the district court to conduct an evidentiary hearing to determine whether Burgess requested his attorney to note an appeal from his conviction. United States v. Burgess, No. 94-6883(L) (4th Cir. June 22, 1995) (unpublished). The district court concluded, after hearing testimony from Burgess and his attorney, that Burgess had not, in fact, asked his attorney to appeal. Our review of the transcript from that hearing reveals that the district court's conclusion was properly supported. Because Burgess failed to appeal, his other claims are waived. See United States v. Emanuel, 869 F.2d 795, 796 (4th Cir. 1989) (nonconstitutional claims not raised on direct appeal may not be asserted in a collateral proceeding). Accordingly, we affirm the district court's judgment. 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