

ON PETITION FOR REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-6276

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ERIC E. ALVAREZ,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. Malcolm J. Howard, District Judge. (CR-97-47; CA-01-75-H)

Submitted: January 14, 2004

Decided: February 11, 2004

Before NIEMEYER and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Eric E. Alvarez, Appellant Pro Se. Robert Edward Skiver, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Eric E. Alvarez has filed a petition for rehearing and for rehearing en banc following our dismissal of his appeal based upon our conclusion and the district court's finding that his notice of appeal was untimely filed. See United States v. Alvarez, No. 02-6276, 2003 WL 22057029 (4th Cir. Sept. 3, 2003) (per curiam). Alvarez asserted on reconsideration in the district court that because no separate entry of judgment followed the district court's dismissal of his 28 U.S.C. § 2255 (2000) motion on August 6, 2001, the time period for filing a notice of appeal never began to run. See Fed. R. Civ. P. 58, Quinn v. Haynes, 234 F.3d 837, 843 (4th Cir. 2000). The district court granted reconsideration and found Alvarez's notice of appeal timely as to the August 6 order.* Accordingly, we granted Alvarez's petition for panel rehearing and denied his petition for rehearing en banc. We now deny a certificate of appealability and dismiss the appeal.

The district court's order denying relief under § 2255 is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial

*Both this court and the district court previously concluded that Alvarez's notice of appeal was not timely as to the district court's order of November 16, 2001, denying his motion for reconsideration. Because the separate document rule does not apply to post-judgment motions, we dismiss as untimely the appeal of the November 16 order.

showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller--El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Alvarez 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