

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6360

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MIGUEL ANGEL BARRERA YERBABUENA, a/k/a Rafael
Castro-Mata,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of Virginia, at Roanoke. James C. Turk, Senior District
Judge. (CR-00-21, CA-01-502-7)

Submitted: May 20, 2003

Decided: May 28, 2003

Before WILKINSON, GREGORY, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Miguel Angel Barrera Yerbabuena, Appellant Pro Se. Eric Matthew
Hurt, OFFICE OF THE UNITED STATES ATTORNEY, Abingdon, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Miguel Angel Barrera Yerbabuena seeks to appeal the district court's order denying relief on his motion filed under 28 U.S.C. § 2255 (2000). An appeal may not be taken to this court from the final order in a § 2255 proceeding 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 for claims addressed by a district court on the merits absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). As to claims dismissed by a district court solely on procedural grounds, a certificate of appealability will not issue unless the movant can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 534 U.S. 941 (2001). We have independently reviewed the record and conclude that Yerbabuena has not satisfied either standard. See Miller-El v. Cockrell, 123 S. Ct. 1029 (2003).^{*} Accordingly, we deny a certificate of appealability and

^{*} To the extent the district court did not have the benefit of Clay v. United States, 123 S. Ct. 1072 (2003), we find this case does not alter the conclusion that reasonable jurists would not debate the district court's conclusion that Yerbabuena's claims raised in a motion to supplement were untimely.

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