

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 03-6588**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DUANE JELEAL OSBOURNE,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Richard L. Voorhees, District Judge. (CR-95-178-V, CA-99-420-3)

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**No. 03-7214**

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In Re: DUANE JELEAL OSBOURNE,

Petitioner.

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On Petition for Writ of Mandamus.  
(CA-99-420-3, CR-95-178-V)

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Submitted: October 23, 2003

Decided: October 30, 2003

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Before WILLIAMS, MOTZ, and SHEDD, Circuit Judges.

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No. 03-6588 dismissed and No. 03-7214 petition denied by unpublished per curiam opinion.

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Duane Jeleal Osbourne, Appellant Pro Se. Gretchen C.F. Shappert, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

In No. 03-6588, Duane Jeleal Osbourne, a federal prisoner, seeks to appeal the district court's orders denying relief on his motion filed under 28 U.S.C. § 2255 (2000), and his motions to amend. The orders are 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 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, \_\_\_, 123 S. Ct. 1029, 1039 (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 Osbourne has not made the requisite showing.\* Accordingly, we deny a certificate of appealability and dismiss the appeal in No. 03-6588.

In No. 03-7214, Osbourne petitions for a writ of mandamus, asking this court to direct the district court to rule on his request for a certificate of appealability. We have determined

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\* We decline to address the issues Osbourne raises for the first time on appeal. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993) (holding that claims raised for first time on appeal will not be considered absent exceptional circumstances).

that Osbourne has not made the requisite showing for a certificate of appealability in Appeal No. 03-6588. Thus, although we grant Osbourne leave to proceed in forma pauperis, we deny the mandamus petition as moot. 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.

No. 03-6588-DISMISSED

No. 03-7214-PETITION DENIED