

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7117

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MELVIN ANTONIO BURL,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Robert G. Doumar, Senior District Judge. (CR-99-176; CA-03-444-02)

Submitted: February 20, 2004

Decided: March 5, 2004

Before WIDENER, WILLIAMS, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Melvin Antonio Burl, Appellant Pro Se. James Ashford Metcalfe, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Melvin Antonio Burl, a federal prisoner, seeks to appeal the district court's order denying his motion filed under 28 U.S.C. § 2255 (2000) as untimely. We previously remanded this case to the district court for the limited purpose of determining when Burl delivered the motion to prison officials for mailing. See Houston v. Lack, 487 U.S. 266 (1988) (holding that prisoner's legal materials are deemed filed on the date they are deposited with prison officials for mailing). On remand, the district court found that Burl delivered his motion to prison officials pursuant to the "system designed for legal mail" on June 17, 2003, one week after the expiration of the time limitation provided in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). See Fed. R. App. P. 4(c)(1).

An appeal may not be taken 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 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 both 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 Burl 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