

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6566

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANDREW WINDSOR, a/k/a Joseph Williams, a/k/a
John Carlton Harris, a/k/a Andrew Wilson,
a/k/a Darryl Thomas,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. James C. Cacheris, Senior
District Judge. (CR-90-228-A)

Submitted: July 21, 2004

Decided: August 13, 2004

Before WIDENER, MICHAEL, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Andrew Windsor, Appellant Pro Se. Nash Whitney Schott, Assistant
United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Andrew Windsor, a federal prisoner, seeks to appeal the district court's order denying relief on his motion filed under 18 U.S.C. § 3582(c)(2) (2000), which the district court properly construed as a motion under 28 U.S.C. § 2255 (2000). The district court dismissed the motion as untimely. This order 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 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). The record demonstrates that the district court lacked jurisdiction to consider the motion as Windsor failed to obtain pre-filing authorization from this court to file it. Windsor's failure to obtain pre-filing authorization to file the § 2255 motion in the first instance precludes granting a certificate of appealability.

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