

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-6988**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ALPHELIOUS ANTOINE ROOKS,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Richard L. Williams, Senior District Judge. (CR-99-312; CA-03-356)

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Submitted: October 29, 2004

Decided: December 7, 2004

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Before WILKINSON, MICHAEL, and KING, Circuit Judges.

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Affirmed in part; dismissed in part by unpublished per curiam opinion.

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Alphelious Antoine Rooks, Appellant Pro Se. David John Novak, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

In this case, the district court denied relief on Alphelious Antoine Rooks' 28 U.S.C. § 2255 (2000) motion and denied Rooks' motion to alter or amend the judgment. After noting his appeal, Rooks requested that the district court issue a certificate of appealability on five issues. The district court granted a certificate of appealability on two issues: (1) whether counsel was ineffective for failure to investigate Rooks' criminal history and for stipulating to a factually erroneous history; and (2) whether Rooks' Sixth Amendment rights were violated because the judge, not the jury, made determinations relating to drug quantity and first degree murder. The court denied a certificate of appealability on the following issues: (3) whether counsel was ineffective for not calling Rooks to the stand; (4) whether counsel was ineffective for not investigating Kermic Williams as a potential defense witness; and (5) whether counsel's cumulative errors constituted ineffective assistance of counsel.

Rooks seeks to appeal the district court's order denying relief on claims (1) and (2) and denying his motion to alter or amend. He also moves to expand the certificate of appealability to include claims (3) and (4). With regard to the denial of relief on claims (1) and (2), we have reviewed the record and find no reversible error. We therefore affirm on the reasoning of the

district court. Nos. CR-99-312; CA-03-356 (E.D. Va. May 7, 2004 and June 22, 2004).

With regard to the district court's denial of relief on claims (3) and (4), 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, 336-38 (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 Rooks has not made the requisite showing. Accordingly, we deny the motion to expand the certificate of appealability, deny a certificate of appealability, and dismiss the appeal. We deny as moot the motion to place the case in abeyance pending the district court's ruling on the motion for a certificate of appealability. 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.

AFFIRMED IN PART;  
DISMISSED IN PART