

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-6059

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KENNY MONTANA HOLTON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, Senior District Judge. (4:98-cr-00009; 4:06-cv-00013)

Submitted: March 29, 2007

Decided: April 6, 2007

Before MOTZ, TRAXLER, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Kenny Montana Holton, Appellant Pro Se. Jane J. Jackson, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenny Montana Holton seeks to appeal the district court's order construing his motion to amend the presentence report as a successive motion filed under 28 U.S.C. § 2255 (2000), and dismissing it for lack of jurisdiction. The 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 any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. 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, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Holton has not made the requisite showing. Accordingly, we deny Holton's motion for a certificate of appealability and dismiss the appeal. We also deny Holton's motion for appointment of counsel and 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