

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7164

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JERMAINE JERRELL SIMS, a/k/a Justice, a/k/a Jus,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Claude M. Hilton, Senior District Judge. (3:98-cr-00045-CMH-1)

Submitted: November 13, 2008

Decided: November 20, 2008

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jermaine Jerrell Sims, Appellant Pro Se. Nicholas Stephan Altimari, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, Kenneth E. Melson, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jermaine Jerrell Sims seeks to appeal the district court's order denying relief on his Motion for Independent Action for Relief from Judgment. 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 Sims 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