UNITED STATES OF AMERICA, Plaintiff-Appellee, versus GARY LEE BEATTY, Defendant-Appellant.

No. 04-6648

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

2004 U.S. App. LEXIS 16161

July 29, 2004, Submitted
**August** 5, 2004, Decided

**NOTICE: [*1]** RULES OF THE FOURTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

**PRIOR HISTORY:** Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. (CR-01-86; CA-04-17-7-F). James C. Fox, Senior District Judge.

**DISPOSITION:** DISMISSED.

**COUNSEL:** Gary Lee Beatty, Appellant, Pro se.

Paul Joseph McNulty, United States Attorney, Alexandria, Virginia, for Appellee.

**JUDGES:** Before LUTTIG, MICHAEL, and DUNCAN, Circuit Judges.

**OPINION:**

PER CURIAM:

Gary Lee Beatty seeks to appeal the district court's order denying relief on his motion filed under 28 U.S.C. § 2255 (2000). 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 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 **[*2]** 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, 154 L. Ed. 2d 931 (2003); Slack v. McDaniel, 529 U.S. 473, 484, 146 L. Ed. 2d 542 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Beatty has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We deny Beatty's motion for an enlargement of time to amend his § 2255 motion to raise a claim under **Blakely v. Washington**, ___ U.S. ___, 2004 WL 1402697 (U.S. June 24, 2004), because Blakely does not apply in

the § 2255 context. See generally Teague v. Lane, 489 U.S. 288, 311, 103 L. Ed. 2d 334 (1989); United States v. Sanders, 247 F.3d 139, 148 (4th Cir. 2001). 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