

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 12-7708**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JASON LAMON KELLY,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. James C. Fox, Senior District Judge. (4:08-cr-00055-F-1; 4:11-cv-00110-F)

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Submitted: February 21, 2013

Decided: February 25, 2013

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Before AGEE and DAVIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Jason Lamon Kelly, Appellant Pro Se. William Ellis Boyle, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jason Lamon Kelly seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2012) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2006). 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) (2006). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Kelly has not made the requisite showing.\* Accordingly, we

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\* Kelly does not challenge the basis of the district court's decision but raises new issues on appeal. We generally do not consider new arguments raised for the first time on appeal. See United States v. Edwards, 666 F.3d 877, 887 (4th Cir. 2011). "Exceptions to this general rule are made only in very limited (Continued)

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 this court and argument would not aid the decisional process.

DISMISSED

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circumstances, such as where refusal to consider the newly-raised issue[s] would be plain error or would result in a fundamental miscarriage of justice." Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993). We conclude that the exceptions do not apply here.