

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6546

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHAVIUS MARQUETTE BARBER, a/k/a The Rock, a/k/a Cha-Roc,
a/k/a KD,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Charlotte. Frank D. Whitney,
Chief District Judge. (3:07-cr-00061-FDW-4; 3:11-cv-00243-FDW)

Submitted: June 20, 2013

Decided: June 26, 2013

Before GREGORY, DUNCAN, and DAVIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Chavius Marquette Barber, Appellant Pro Se. Amy Elizabeth Ray
Assistant United States Attorney, Asheville, North Carolina;
Dana Owen Washington, Kevin Zolot, OFFICE OF THE UNITED STATES
ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Chavius Marquette Barber appeals the district court's order construing his motion to amend his 28 U.S.C.A. § 2255 (West Supp. 2012) motion as a successive § 2255 motion, and dismissing it on that basis. 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 Barber 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 this court and argument would not aid the decisional process.

DISMISSED