

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-7188**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TERRELL L. MALLARD, a/k/a Terrell Mailard,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Charleston. Patrick Michael Duffy, Senior District Judge. (2:09-cr-00461-PMD-1; 2:12-cv-00718-PMD)

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Submitted: December 16, 2013

Decided: December 23, 2013

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

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Dismissed by unpublished per curiam opinion.

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Terrell L. Mallard, Appellant Pro Se. Matthew J. Modica, Assistant United States Attorney, Charleston, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Terrell L. Mallard seeks to appeal the district court's order denying his Fed. R. Civ. P. 60(b) motion for reconsideration\* of the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2013) 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.

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\* We note that the motion was not a second or successive § 2255 motion, but instead a true Rule 60(b) motion. Gonzalez v. Crosby, 545 U.S. 524, 530-32 (2005); United States v. Winestock, 340 F.3d 200, 206-08 (4th Cir. 2003).

We have independently reviewed the record and conclude that Mallard 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