

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-7236

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SELVIN DARIO NAJERA,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Glen E. Conrad, Chief District Judge. (7:12-cr-00066-GEC-RSB-2; 7:16-cv-81183-GEC-RSB)

Submitted: January 31, 2017

Decided: February 3, 2017

Before WILKINSON, KEENAN, and THACKER, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Selvin Dario Najera, Appellant Pro Se. Ronald Andrew Bassford, Assistant United States Attorney, Laura Day Rottenborn, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Selvin Dario Najera seeks to appeal the district court's order denying and dismissing his "Motion Pursuant to 28 U.S.C. § 2255 [(2012)]," in which he sought a reduced sentence based on Amendment 794 to the Sentencing Guidelines. The district court dismissed without prejudice the request for § 2255 relief, construed the motion as one seeking a reduction in sentence under 18 U.S.C. § 3582(c) (2012), and denied that motion.

With respect to the portion of the court's order denying Najera's effort to receive a sentence reduction under § 3582(c), we have reviewed the record and find no reversible error. Accordingly, we affirm this portion of the district court's order for the reasons stated by the district court. United States v. Najera, No. 7:12-cr-00066-GEC-RSB-2 (W.D. Va. Sept. 1, 2016).

The portion of the district court's order dismissing without prejudice Najera's 28 U.S.C. § 2255 motion is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). 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) (2012). 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 Najera has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal in part. 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.

AFFIRMED IN PART;
DISMISSED IN PART