

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6459

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIE EDWARD BARNES, a/k/a Big Will,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia,
at Martinsburg. Gina M. Groh, Chief District Judge. (3:08-cr-00064-GMG-RWT-1)

Submitted: September 26, 2017

Decided: September 28, 2017

Before NIEMEYER and TRAXLER, Circuit Judges, and HAMILTON, Senior Circuit
Judge.

Dismissed by unpublished per curiam opinion.

Willie Edward Barnes, Appellant Pro Se. Paul Thomas Camilletti, Assistant United
States Attorney, Martinsburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Willie Edward Barnes seeks to appeal from the district court's order construing his petition for a writ of audita querela as a 28 U.S.C. § 2255 (2012) motion to vacate and dismissing the motion as untimely. We conclude that Barnes' motion was in substance a successive § 2255 motion.

The district court's order 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 Barnes has not made the requisite showing. The district court lacked jurisdiction to deny § 2255 relief on the merits because Barnes' motion challenged the validity of his sentence and should have been construed as a successive § 2255 motion. See *Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005); *United States v. Winestock*, 340 F.3d 200, 207 (4th Cir. 2003).

In the absence of pre-filing authorization from this court, the district court lacked jurisdiction to hear a successive § 2255 motion. *See* 28 U.S.C. § 2244(b)(3) (2012).

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