

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6639

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THERON JERMAINE THOMPSON, a/k/a Freak,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at New Bern. Louise W. Flanagan, District Judge. (4:08-cr-00004-FL-1; 4:11-cv-00074-FL)

Submitted: September 26, 2017

Decided: September 28, 2017

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

Dismissed in part and affirmed in part by unpublished per curiam opinion.

Theron Jermaine Thompson, Appellant Pro Se. Joshua Bryan Royster, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Theron Jermaine Thompson appeals from the district court's order denying his motion to amend/correct his presentence report in the underlying criminal proceeding. To the extent that Thompson's pleading was construed as a 28 U.S.C. § 2255 (2012) 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 Thompson has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss this portion of the appeal.

To the extent Thompson's motion was construed as a petition under 28 U.S.C. § 2241 (2012), or as a motion under either Fed. R. Crim. P. 32 or Fed. R. Crim. P. 36, we have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm this portion of the order for the reasons stated by the district

court. *United States v. Thompson*, Nos. 4:08-cr-00004-FL-1; 4:11-cv-00074-FL (E.D.N.C. May 2, 2017).

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 IN PART; AFFIRMED IN PART