

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6640

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TRADON MARQUEZ DRAYTON,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Abingdon. James P. Jones, District Judge. (1:04-cr-00009-JPJ-1; 1:16-cv-80929-JPJ-RSB)

Submitted: September 28, 2017

Decided: October 3, 2017

Before WILKINSON, MOTZ, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Tradon Marquez Drayton, Appellant Pro Se. Anthony Paul Giorno, Ashley Brooke Neese, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tradon Marquez Drayton seeks to appeal the district court's orders construing Drayton's postjudgment motion to dismiss one count of the charging indictment as a successive 28 U.S.C. § 2255 (2012) motion and dismissing it on that basis, and denying Drayton's Fed. R. Civ. P. 59(e) motion to alter or amend judgment. The orders are 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 Drayton 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