UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6713

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

ELIGIA JUNIOR MARTIN, a/k/a Shorty Boy,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Danville. Jackson L. Kiser, Senior District Judge. (4:06-cr-00049-jlk-mfu-3; 4:10-cv-80233-jlk-mfu)

Submitted: October 19, 2010 Decided: October 27, 2010

Before DUNCAN, KEENAN, and WYNN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Eligia Junior Martin, Appellant Pro Se. Ronald Andrew Bassford, Anthony Paul Giorno, Assistant United States Attorneys, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eligia Junior Martin seeks to appeal the district court's order dismissing as untimely his 28 U.S.C.A. § 2255 (West Supp. 2010) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (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. We have independently reviewed the record and conclude that Martin 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 the court and argument would not aid the decisional process.

DISMISSED