

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6924

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

AUGUSTINE PEREZ,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Lynchburg. James P. Jones, District Judge. (6:90-cr-00112-JPJ-MFU-1; 6:10-cv-80266-JPJ-MFU)

Submitted: December 16, 2010

Decided: December 27, 2010

Before GREGORY, DUNCAN, and DAVIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Augustine Perez, Appellant Pro Se. Ray Burton Fitzgerald, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Ronald Mitchell Huber, Assistant United States Attorney, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Augustine Perez seeks to appeal the district court's order construing his filing as a 28 U.S.C.A. § 2255 (West Supp. 2010) motion and denying relief. 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 Perez 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