

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-7377

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FLOYD RAYMOND LOOKER, a/k/a Ray,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Frederick P. Stamp, Jr., Senior District Judge. (1:96-cr-00043-FPS-1; 1:99-cv-00181-FPS)

Submitted: March 14, 2011

Decided: April 8, 2011

Before NIEMEYER, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Floyd Raymond Looker, Appellant Pro Se. David Earl Godwin, Shawn Angus Morgan, Assistant United States Attorneys, Clarksburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Floyd Raymond Looker, Jr. seeks to appeal the district court's order denying his motion to amend his previously denied 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 Looker has not made the requisite showing. A district court may only grant a post-judgment motion to amend if the court has vacated the underlying judgment pursuant to Fed. R. Civ. P. 59(e) or 60(b). Laber v. Harvey, 438 F.3d 404, 427-48 (4th Cir. 2006) (en banc). Here, the district court did not

vacate the underlying judgment, a judgment that this court declined to overrule on appeal. 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