

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-7588

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT MOSES WILKERSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. Malcolm J. Howard, Senior District Judge. (5:96-cr-00167-H-1)

Submitted: February 10, 2011 Decided: February 23, 2011

Before WILKINSON and DAVIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Robert Moses Wilkerson, Appellant Pro Se. Steve R. Matheny, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Moses Wilkerson seeks to appeal the district court's order denying his self-styled motion for writ of audit querela. Because Wilkerson's motion was a successive and unauthorized 28 U.S.C.A. § 2255 (West Supp. 2010) motion, see 28 U.S.C. § 2255(h); In re Vial, 115 F.3d 1192, 1194 (4th Cir. 1997), the district court was obligated to dismiss the motion, see United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003), and the order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006); Reid v. Angelone, 369 F.3d 363, 369 (4th Cir. 2004).

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 Wilkerson 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