

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 10-7655**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT PETER RUSSELL,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (1:91-cr-00056-AVB-1; 1:93-cv-01036-JCC)

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Submitted: May 26, 2011

Decided: May 31, 2011

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Before KING, SHEDD, and DIAZ, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Robert Peter Russell, Appellant Pro Se. Michael Edward Rich, Assistant United States Attorney, Alexandria, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Peter Russell seeks to appeal the district court's order denying his Fed. R. Civ. P. 60(d)(3) motion to reopen judgment in his 28 U.S.C.A. § 2255 (West Supp. 2010) proceedings, and a subsequent order denying his Fed. R. Civ. P. 59 motion to alter or amend judgment and his Fed. R. Civ. P. 60(b)(4) motion. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (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 Russell has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We further deny Russell's motion to remand the case

for an evidentiary hearing, and we dismiss as moot his motion to expedite our decision on that motion. 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