

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 12-6823**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC DEWAYNE SPENCER, a/k/a High School,

Defendant - Appellant.

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Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. David A. Faber, Senior District Judge. (2:99-cr-00012-3; 2:08-cv-01390)

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Submitted: December 20, 2013

Decided: May 8, 2014

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Before NIEMEYER, MOTZ, and GREGORY, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Eric Dewayne Spencer, Appellant Pro Se. Michael Elston, UNITED STATES POSTAL SERVICE, Washington, D.C.; Gary L. Call, Steven Loew, Assistant United States Attorneys, Charleston, West Virginia; Kimberly Riley Pedersen, Assistant United States Attorney, Alexandria, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eric Dewayne Spencer seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2255 (2012) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). 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) (2012). 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 Spencer 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 this court and argument would not aid the decisional process.

DISMISSED