

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7021

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PRESTON CORNELIUS EVERETT, a/k/a P,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:05-cr-00019-LMB-1)

Submitted: November 2, 2012

Decided: November 7, 2012

Before WILKINSON, KEENAN, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Preston Cornelius Everett, Appellant Pro Se. G. David Hackney, Assistant United States Attorney, Sarah E. Roque, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Preston Cornelius Everett seeks to appeal the district court's order denying relief on his "Motion to Correct" his sentence. Because Everett sought to challenge his sentence, the district court construed the action as a successive motion under 28 U.S.C.A. § 2255 (West Supp. 2012) and dismissed the action because Everett failed to first obtain authorization from this court to file a successive § 2255 motion. 28 U.S.C.A. § 2255(h). The order is 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 Everett 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