

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7073

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LENNELL DYCHES,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Joseph F. Anderson, Jr., District Judge. (8:06-cr-00136-JFA-1)

Submitted: November 2, 2012

Decided: November 6, 2012

Before WILKINSON, KEENAN, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Lennell Dyches, Appellant Pro Se. Elizabeth Jean Howard, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lennell Dyches seeks to appeal the district court's order denying his self-styled motion to dismiss his criminal case pursuant to Fed. R. Civ. P. 60(d).^{*} Dyches has also filed with this court a motion to withdraw his guilty plea. The order as to which Dyches seeks review 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). 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,

^{*} To the extent that Dyches' motion directly attacked his convictions and sentence, it was, in essence, an unauthorized and successive 28 U.S.C.A. § 2255 (West Supp. 2012) motion over which the district court lacked jurisdiction. See United States v. Winestock, 340 F.3d 200, 206 (4th Cir. 2003).

529 U.S. at 484-85. We have independently reviewed the record and conclude that Dyches has not made the requisite showing. Accordingly, we deny Dyches' motion to withdraw his guilty plea, 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