

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7223

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSEPH ALLEN SMITH,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:10-cr-00438-LMB-1)

Submitted: December 12, 2012

Decided: December 20, 2012

Before DUNCAN and WYNN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Joseph Allen Smith, Appellant Pro Se. Andrew John Ewalt, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Shayna Amanda Hutchins, James Patrick McDonald, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Joseph Allen Smith seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 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) (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 Smith has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We deny Smith's motion to produce a grand jury concurrence form and 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