

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7568

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KELVIN ANDRE SPOTTS, a/k/a Shorty,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert C. Chambers, Chief District Judge. (3:98-cr-00047-1; 3:12-cv-00354)

Submitted: July 23, 2013

Decided: August 6, 2013

Before GREGORY, DAVIS, and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Kelvin Andre Spotts, Appellant Pro Se. John J. Frail, Assistant United States Attorney, Steven Loew, Assistant United States Attorney, Charleston, West Virginia, Richard Gregory McVey, Assistant United States Attorney, Huntington, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kelvin Andre Spotts seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2013) 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 Spotts has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We deny the motions for remand, for stay of the proceedings, and for recall of the mandate in No. 99-4121. 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