

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 12-7641**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEFFREY RIOS,

Defendant - Appellant.

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Appeal from the United States District Court for the District of Maryland, at Greenbelt. Peter J. Messitte, Senior District Judge. (8:10-cr-00017-PJM-1; 8:11-cv-02238-PJM)

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Submitted: February 21, 2013

Decided: March 11, 2013

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Before KING and KEENAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed in part; affirmed in part by unpublished per curiam opinion.

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Jeffrey Rios, Appellant Pro Se. Adam Kenneth Ake, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jeffrey Rios seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2012) motion, which the district court construed as a motion for reduction of sentence under 18 U.S.C. § 3582(c)(2) (2006). Rios insists on appeal that his motion, in which he challenges the effectiveness of counsel and seeks to have his sentence vacated for resentencing, was filed pursuant to § 2255; therefore, we review it as such.

An order denying relief under § 2255 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 Rios has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal in part.

Although we do not agree with the district court's construction of the entirety of Rios' motion as one for reduction of sentence under § 3582(c)(2), we do agree with the court's reasoning in denying that relief. Therefore, to the extent that Rios' pleading sought relief available pursuant to § 3582(c)(2), we affirm the denial of § 3582(c)(2) relief on the reasoning of the district court. Rios v. United States, Nos. 8:10-cr-00017-PJM-1; 8:11-cv-02238-PJM (D. Md. Aug. 29, 2012). 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 IN PART;  
AFFIRMED IN PART