

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 12-7879**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RODNEY EDWARD STEWART,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of Virginia, at Abingdon. James P. Jones, District Judge. (1:06-cr-00046-JPJ-1; 1:10-cv-80213-JPJ)

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Submitted: February 20, 2013

Decided: March 28, 2013

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Before GREGORY, DUNCAN, and DIAZ, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Rodney Edward Stewart, Appellant Pro Se. Jennifer R. Bockhorst, Assistant United States Attorney, Abingdon, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Rodney Edward Stewart seeks to appeal the district court's order denying his Fed. R. Civ. P. 60(b) motion for relief from the district court's order denying 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. See 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 Stewart has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.

Additionally, we construe Stewart's notice of appeal, informal brief, and supplemental informal brief as an application to file a second or successive § 2255 motion. See United States v. Winestock, 340 F.3d 200, 208 (4th Cir. 2003). In order to obtain authorization to file a successive § 2255 motion, a prisoner must assert claims based on either: (1) newly discovered evidence, not previously discoverable by due diligence, that would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, previously unavailable, made retroactive by the Supreme Court to cases on collateral review. See 28 U.S.C.A. § 2255(h) (West Supp. 2012). Stewart's claims do not satisfy either of these criteria. Therefore, we deny authorization to file a successive § 2255 motion.

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