

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-8158

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES STEVEN LESANE,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:08-cr-00185-REP-1; 3:10-cv-00109-REP)

Submitted: April 19, 2013

Decided: May 2, 2013

Before WILKINSON and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

James Steven Lesane, Appellant Pro Se. Elizabeth Wu, Assistant United States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Steven Lesane first 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 Lesane has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal of the district court's order denying Lesane § 2255 relief.

Lesane also seeks to appeal the district court's order denying his second Fed. R. Crim. P. 33 motion. We have reviewed the record and find no reversible error. Accordingly, we affirm the order denying Lesane's second Rule 33 motion for the reasons stated by the district court. United States v. Lesane, Nos. 3:08-cr-00185-REP-1; 3:10-cv-00109-REP (E.D. Va. Dec. 13, 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