

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6080

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES R. BURNS,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, District Judge. (3:09-cr-00234-FDW-2; 3:12-cv-00388-FDW)

Submitted: May 30, 2013

Decided: June 4, 2013

Before SHEDD, DIAZ, and THACKER, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Charles R. Burns, Appellant Pro Se. William A. Brafford, Assistant United States Attorney, Robert John Gleason, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Charles R. Burns seeks to appeal the district court's order granting in part and denying in part his motions for reduction of sentence under 18 U.S.C. § 3582(c)(2) (2006), and denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2012) motion. We have reviewed the district court's partial denial of Burns' § 3582(c)(2) motion and find no reversible error. Accordingly, we affirm the district court's order in part for the reasons stated by the district court. United States v. Burns, Nos. 3:09-cr-00234-FDW-2; 3:12-cv-00388-FDW (W.D.N.C. Jan. 2, 2013).

The district court's order denying relief on Burns' § 2255 motion 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 Burns has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal in part. 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.

AFFIRMED IN PART;
DISMISSED IN PART