

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-6154**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EARNEST ROBERT BAXTER,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Samuel G. Wilson, District Judge. (7:09-cr-00046-SGW-RSB-1; 7:12-cv-80482-SGW-RSB)

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Submitted: July 25, 2013

Decided: July 31, 2013

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Before KING, DAVIS, and KEENAN, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Earnest Robert Baxter, Appellant Pro Se. Ronald Andrew Bassford, Craig Jon Jacobsen, I, Assistant United States Attorneys, Roanoke, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Earnest Robert Baxter seeks to appeal the district court's orders 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.

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\* Baxter also appeals the district court's post-judgment order denying a motion to amend his § 2255 motion. Although we have jurisdiction to review the order, see Smith v. Barry, 502 U.S. 244, 245 (1992), we conclude that the district court did not abuse its discretion in denying the motion. See Equal Rights Ctr. v. Niles Bolton Assocs., 602 F.3d 597, 603 (4th Cir. 2010) (standard of review).

We have independently reviewed the record and conclude that Baxter has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny as moot Baxter's motion to place case in abeyance, and dismiss the appeal. 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