

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6451

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID LYNN HATFIELD,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. Thomas E. Johnston, District Judge. (5:02-cr-00219-1; 5:10-cv-00128)

Submitted: July 15, 2013

Decided: July 23, 2013

Before MOTZ, GREGORY, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David Lynn Hatfield, Appellant Pro Se. Joshua Clarke Hanks, Assistant United States Attorney, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Lynn Hatfield seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2013) motion.¹ 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.

¹ Hatfield also challenges the district court's re-characterization of his filing as one arising under § 2255. Hatfield, however, failed to object to the district court's re-characterization despite receiving notice of the court's intent to do so. Accordingly, we decline to consider this claim on appeal. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993).

We have independently reviewed the record and conclude that Hatfield has not made the requisite showing.² Accordingly, we deny a certificate of appealability 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

² The magistrate judge issued a report addressing the merits of Hatfield's claims and recommending the denial of the § 2255 motion. The district court denied Hatfield's motion as moot because Hatfield had been released from custody and completed his term of supervised release before the district court reached a decision on the motion. Because Hatfield was in custody at the time he filed his motion, it should not have been dismissed as moot. Carafas v. LaVallee, 391 U.S. 234 (1968). However, after carefully reviewing the record, we conclude that although the district court's procedural disposition was erroneous, Hatfield's motion, considered on its merits, fails to state a debatable claim of the denial of a constitutional right.