

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-6515**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FLOYD JUNIOR POWELL, a/k/a Dick,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Robert J. Conrad, Jr., Chief District Judge. (5:99-cr-00012-RLV-6; 5:12-cv-00108-RJC)

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Submitted: May 8, 2013

Decided: May 24, 2013

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Before NIEMEYER, KING, and DUNCAN, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Floyd Junior Powell, Appellant Pro Se. William A. Brafford, Assistant United States Attorney, Charlotte, North Carolina; Amy Elizabeth Ray, Assistant United States Attorney, Asheville, North Carolina; Adam Christopher Morris, Craig Darren Randall, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Floyd Junior Powell seeks to appeal the district court's order treating his motion for relief under 28 U.S.C. § 1651 (2006) as a successive 28 U.S.C.A. § 2255 (West Supp. 2012) motion, and dismissing it on that basis. 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 Powell has not made the requisite showing. 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