

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6669

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EVERETTE ATKINSON, a/k/a Rick,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, District Judge. (5:05-cr-00009-FL-1; 5:12-cv-00283-FL)

Submitted: January 20, 2015

Decided: February 3, 2015

Before GREGORY, SHEDD, and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Everette Atkinson, Appellant Pro Se. Jennifer P. May-Parker, Assistant United States Attorney, Kristine L. Fritz, Banumathi Rangarajan, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Everette Atkinson seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing as untimely his 28 U.S.C. § 2255 (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 Atkinson has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We further deny Atkinson's motion to place this appeal in abeyance for No. 13-7841, United States v. Foote. 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