

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6806

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DARYL DEON EVERETT,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, Senior District Judge. (5:05-cr-00189-H-1; 5:12-cv-00236-H)

Submitted: August 12, 2013

Decided: August 22, 2013

Before NIEMEYER, DIAZ, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Daryl Deon Everett, Appellant Pro Se. Joe Exum, Jr., Jennifer P. May-Parker, Assistant United States Attorneys, Raleigh, North Carolina; Anne Margaret Hayes, Cary, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Daryl Deon Everett seeks to appeal the district court's orders dismissing his 28 U.S.C.A. § 2255 (West Supp. 2013) motion as time-barred and denying his subsequent motion to alter or amend judgment under Fed. R. Civ. P. 59(e). The orders are 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). 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 Everett 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