

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 13-6908**

---

TIMOTHY HOWARD WALDEN,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,

Respondent - Appellee.

---

Appeal from the United States District Court for the Western District of North Carolina,  
at Charlotte. Frank D. Whitney, Chief District Judge. (3:04-cr-00039-FDW-5; 3:12-cv-  
00421-FDW)

---

Submitted: May 30, 2017

Decided: June 7, 2017

---

Before WILKINSON, NIEMEYER, and KING, Circuit Judges.

---

Dismissed by unpublished per curiam opinion.

---

Timothy Howard Walden, Appellant Pro Se. Amy Elizabeth Ray, Assistant United  
States Attorney, Asheville, North Carolina, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Timothy Howard Walden seeks to appeal the district court's order denying relief on 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) (2012). 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) (2012). 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 Walden 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

---

\* To the extent Walden sought to raise his claim under 28 U.S.C. § 2241 (2012), by way of the savings clause in 28 U.S.C. § 2255(e), his claim is not cognizable because the change in law he seeks to assert did not occur "subsequent to [his] direct appeal and first § 2255 motion." *Prousalis v. Moore*, 751 F.3d 272, 275 (4th Cir. 2014) (quoting *In re Jones*, 226 F.3d 328, 333-34 (4th Cir. 2000)).

contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*DISMISSED*