

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6909

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DOUGLAS GENE WHITFIELD,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever, III, Chief District Judge. (5:10-cr-00121-D-3; 5:11-cv-00610-D)

Submitted: November 19, 2013

Decided: November 22, 2013

Before WYNN and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Douglas G. Whitfield, Appellant Pro Se. Seth Morgan Wood, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Douglas Gene Whitfield seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2013) 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 Whitfield has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.*

* Whitfield also seeks to appeal the district court's denial of his Fed. R. Civ. P. 59(e) motion. We conclude that we lack jurisdiction over an appeal from that motion because Whitfield did (Continued)

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

not file a new notice of appeal or amend his notice of appeal to embrace the district court's order. See Fed. R. App. P. 4(a)(4)(B)(ii).