

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-6925**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANKIE SYLVESTER TURNER,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, Chief District Judge. (2:93-cr-00014-1; 2:13-cv-00255-RBS)

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Submitted: August 22, 2013

Decided: August 27, 2013

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Before MOTZ, DIAZ, and FLOYD, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Frankie Sylvester Turner, Appellant Pro Se. Elizabeth Marie Yusi, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Frankie Sylvester Turner seeks to appeal the district court's order construing his 28 U.S.C.A. § 2241 (West 2006 & Supp. 2013) petition as a 28 U.S.C.A. § 2255 (West Supp. 2013) motion and dismissing it as untimely. 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 Turner 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