

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7181

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRICK KEITH USSERY, SR., a/k/a Boogaloo,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. Malcolm J. Howard, Senior District Judge. (4:10-cr-00030-H-1; 4:12-cv-00175-H)

Submitted: January 31, 2014

Decided: February 20, 2014

Before NIEMEYER, KING, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Derrick Keith Ussery, Sr., Appellant Pro Se. Jennifer P. May-Parker, Evan Rikhye, Assistant United States Attorneys, Joshua Bryan Royster, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick K. Ussery, Sr., seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2255 (2012) motion and his Fed. R. Civ. P. 60(b) motion for reconsideration. 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) (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 Ussery has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny as moot Ussery's motion to place his case in abeyance pending our decision in Miller v. United States, 735 F.3d 141 (4th Cir. as moot, 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