

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7514

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHIRLAND L. FITZGERALD,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Danville. Samuel G. Wilson, District Judge. (4:08-cr-00001-SGW-1; 4:13-cv-80625-SGW-RSB)

Submitted: November 15, 2013

Decided: November 20, 2013

Before MOTZ, GREGORY, and WYNN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Shirland L. Fitzgerald, Appellant Pro Se. Anthony Paul Giorno, Assistant United States Attorney, Roanoke, Virginia; Mitchell Stuart Bober, UNITED STATES DEPARTMENT OF JUSTICE, Washington, DC, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Shirland L. Fitzgerald seeks to appeal the district court's order treating his Fed. R. Civ. P. 60(b) motion as a successive 28 U.S.C. § 2255 (2012) motion, and dismissing it without prejudice on that basis. 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 Fitzgerald 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