

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7555

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHESTER EUGENE DOWNING,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Elizabeth City. James C. Fox, Senior District Judge. (2:08-cr-00016-F-2; 2:11-cv-00057-F)

Submitted: January 27, 2014

Decided: February 6, 2014

Before KING, SHEDD, and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Chester Eugene Downing, Appellant Pro Se. Jennifer P. May-Parker, Assistant United States Attorney, Tobin Webb Lathan, 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Unpublished opinions are not binding precedent in this circuit.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:

Chester Eugene Downing seeks to appeal the district court's orders construing his Fed. R. Civ. P. 60(b)(4) motions as motions under 28 U.S.C. § 2255 (2012) and dismissing them as successive, and denying his motion to reconsider. The orders are 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 Downing 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