

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7604

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES SCOTT, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:07-cr-00066-HEH-1)

Submitted: February 27, 2014

Decided: March 10, 2014

Before KING, GREGORY, and FLOYD, Circuit Judges.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

James Scott, Jr., Appellant Pro Se. Stephen Wiley Miller, Stephen David Schiller, Assistant United States Attorneys, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Scott, Jr., seeks to appeal the district court's order denying relief on his Fed. R. Civ. P. 60(b) motion, which the court properly construed as a successive and unauthorized 28 U.S.C. § 2255 (2012) motion. Scott also appeals the district court's order denying his motion for return of seized property. We dismiss in part and affirm in part.

The order denying relief on the § 2255 motion is 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 Scott has not made the requisite showing.

Accordingly, we deny a certificate of appealability and dismiss this portion of the appeal.

Scott also appeals the district court's order denying his Fed. R. Crim. P. 41(g) motion for return of seized property. We have reviewed the record and find no reversible error. Accordingly, we affirm the denial of relief for the reasons stated by the district court. United States v. Scott, No. 3:07-cr-00066-HEH-1 (E.D. Va. Aug. 21, 2013).

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 IN PART;
AFFIRMED IN PART