

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-6364

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SOMSAK SAEKU,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:07-cr-00304-BO-1; 5:12-cv-00616-BO)

Submitted: July 29, 2014

Decided: July 31, 2014

Before NIEMEYER, WYNN, and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Somsak Saeku, Appellant Pro Se. William Miller Gilmore, Rudolf A. Renfer, Jr., Stephen Aubrey West, Assistant United States Attorneys, Gaston Williams, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Somsak Saeku seeks to appeal the district court's orders denying his Fed. R. Civ. P. 59(e) motion and denying relief on his motions for recusal, to dismiss the indictment, for reconsideration, and to amend his 28 U.S.C. § 2255 (2012) motion, which the district court had already denied.* 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

* To the extent Saeku attempts to challenge the district court's denial of his first § 2255 motion, he failed to file a timely notice of appeal from that order, thereby depriving us of jurisdiction.

claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Saeku 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