

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-7086

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RODNEY W. WHITNEY,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, Chief District Judge. (3:11-cr-00049-FDW-1; 3:14-cv-00045-FDW)

Submitted: December 16, 2014

Decided: December 19, 2014

Before DUNCAN and KEENAN, Circuit Judges, and DAVIS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Rodney W. Whitney, Appellant Pro Se. Ellen Ruth Meltzer, Special Counsel, UNITED STATES DEPARTMENT OF JUSTICE, Fraud Division, Washington, D.C.; Amy Elizabeth Ray, Assistant United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Rodney W. Whitney seeks to appeal the district court's order adjudicating his 28 U.S.C. § 2255 (2012) motion, in which the district court granted relief in part by directing vacatur and reentry of Whitney's criminal judgment so as to permit him the opportunity to file a direct appeal, but dismissed the remainder of the § 2255 claims without prejudice.

Whitney confines his appeal to the portion of the district court's order dismissing his claims without prejudice.* This ruling, however, 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). 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

* We do not consider the portion of the district court's order granting Whitney § 2255 relief in part because Whitney does not address it in his informal appellate brief.

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 Whitney 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