

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-7246

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TERRELL ROGERS, a/k/a Tavon,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. William M. Nickerson, Senior District Judge. (1:09-cr-00467-WMN-1; 1:13-cv-00116-WMN)

Submitted: December 16, 2014

Decided: December 19, 2014

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

Affirmed in part, dismissed in part by unpublished per curiam opinion.

Terrell Rogers, Appellant Pro Se. Judson T. Mihok, Assistant United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Terrell Rogers appeals the district court's orders denying a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) (2012) and denying his Fed. R. Civ. P. 60(b) motion for reconsideration of the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. For the reasons that follow, we affirm in part and dismiss in part.

Rogers sought a sentence reduction under Guidelines Amendment 750 and the Fair Sentencing Act. We conclude the district court properly determined that neither the crack cocaine Guidelines amendments nor the Fair Sentencing Act impacted Rogers' Guidelines calculations and resulting sentence, as his sentence was driven by the attempted first-degree murder cross-reference applied for his 18 U.S.C. § 922(g)(1) (2012) conviction and his statutory enhancement under 18 U.S.C. § 924(e) (2012). See United States v. Munn, 595 F.3d 183, 187 (4th Cir. 2010). We therefore affirm the portion of the district court's order denying a sentence reduction.

The order denying Rogers' Rule 60(b) 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 Rogers has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss this portion of 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.

AFFIRMED IN PART,
DISMISSED IN PART