

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 14-7247**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICHARD ALLEN SMITH, JR.,

Defendant - Appellant.

---

Appeal from the United States District Court for the Northern District of West Virginia, at Elkins. Frederick P. Stamp, Jr., Senior District Judge. (2:00-cr-00007-FPS-JES-1)

---

Submitted: November 18, 2014

Decided: November 21, 2014

---

Before NIEMEYER, MOTZ, and GREGORY, Circuit Judges.

---

Affirmed in part, dismissed in part by unpublished per curiam opinion.

---

Richard Allen Smith, Jr., Appellant Pro Se. Stephen Donald Warner, Assistant United States Attorney, Elkins, West Virginia, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Richard Allen Smith, Jr., appeals the district court's order denying as untimely his Fed. R. Crim. P. 12(b)(3) motion, construing that motion as a successive 28 U.S.C. § 2255 (2012) motion, and dismissing it as unauthorized. To the extent that Allen appeals the court's denial of his Rule 12(b)(3) motion, we confine our review to the issues raised in the Appellant's informal brief. See 4th Cir. R. 34(b). Because Allen does not challenge in his informal brief the basis for the district court's disposition, he has forfeited appellate review of that portion of the court's order. Accordingly, we affirm the district court order denying Smith's Rule 12(b)(3) motion.

To the extent that Allen seeks to appeal the district court's order construing his motion as a successive and unauthorized § 2255 motion, the order 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 Smith 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.

AFFIRMED IN PART;  
DISMISSED IN PART