

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-7282

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PHILLIP A. HAMILTON,

Defendant - Appellant.

No. 14-7310

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PHILLIP A. HAMILTON,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:11-cr-00013-HEH-1; 3:14-cv-00254-HEH)

Submitted: December 18, 2014

Decided: December 23, 2014

Before SHEDD, WYNN, and THACKER, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Phillip A. Hamilton, Appellant Pro Se. Gurney Wingate Grant, II, Assistant United States Attorney, David Vincent Harbach, II, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia; Benjamin L. Hatch, Robert Joseph Seidel, Jr., Assistant United States Attorneys, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In No. 14-7282, Phillip A. Hamilton, a federal prisoner, seeks to appeal the district court's order denying relief on his Fed. R. Crim. P. 33 motion for a new trial. In No. 14-7310, Hamilton seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. We affirm in part and dismiss in part.

With regard to Hamilton's appeal of the district court's denial of his Rule 33 motion for a new trial, we have reviewed the record and find no reversible error. Accordingly, while we grant leave to proceed in forma pauperis, we affirm for the reasons stated by the district court. See United States v. Hamilton, No. 3:11-cr-00013-HEH-1 (E.D. Va. Aug. 13, 2014).

Turning to the denial of § 2255 relief, 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 Hamilton 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