

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-6015

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICHARD ALLEN SMITH, JR., a/k/a Smitty,

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: April 16, 2015

Decided: April 21, 2015

Before AGEE and KEENAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Richard Allen Smith, Jr., Appellant Pro Se. Paul Thomas Camilletti, Assistant United States Attorney, Martinsburg, West Virginia; Robert Hugh McWilliams, Jr., John Castle Parr, Assistant United States Attorneys, Wheeling, West Virginia; 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Unpublished opinions are not binding precedent in this circuit.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 his motions for a mandatory evidentiary hearing, to strike the Government's consolidated response to his motions, for a release order, and for a certificate of release, and construing his motions for summary judgment and to review his sentence as successive 28 U.S.C. § 2255 (2012) motions and dismissing them as unauthorized. We confine our review to the issues raised in the Appellant's brief. See 4th Cir. R. 34(b). Smith does not challenge in his informal brief the basis for the district court's denial of his motions for a mandatory evidentiary hearing, to strike the Government's consolidated response to his motions, for a release order, and for a certificate of release. Thus, he has forfeited appellate review of the court's disposition of those motions, and we affirm that portion of the court's order.

To the extent that Smith seeks to appeal the district court's order construing his motions for review of sentence and for summary judgment as successive and unauthorized § 2255 motions, 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