

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-6186

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HOWARD R. SHMUCKLER,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:11-cr-00344-LMB-1)

Submitted: August 18, 2015

Decided: September 3, 2015

Before KING and FLOYD, Circuit Judges, and DAVIS, Senior Circuit Judge.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

Howard R. Shmuckler, Appellant Pro Se. Uzo Enyinnaya Asonye, Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Howard R. Shmuckler seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2255 (2012) motion and dismissing his Fed. R. Civ. P. 60(b) motion as an unauthorized § 2255 motion.

The order denying § 2255 relief 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 Shmuckler has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal in part. We affirm the portion of the appeal pertaining to the

district court's dismissal of Shmuckler's Rule 60(b) motion for the reasons stated by the district court. United States v. Shmuckler, No. 1:11-cr-00344-LMB-1 (E.D. Va. filed Jan. 26, 2015; entered Jan. 27, 2015); see United States v. McRae, ___ F.3d ___, 2015 WL 4190665 (4th Cir. July 13, 2015) (holding that movant need not obtain a certificate of appealability to appeal district court's dismissal of a Rule 60(b) motion that court construed as a successive habeas motion). 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 IN PART;
AFFIRMED IN PART