

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6480

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: September 29, 2016

Decided: October 4, 2016

Before SHEDD, KEENAN, and HARRIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.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Unpublished opinions are not binding precedent in this circuit.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., seeks to appeal the district court's order construing Smith's self-styled "Motion to Compel the Release of Exculpatory Documents" as a 28 U.S.C. § 2255 (2012) motion and denying the motion as successive and without this court's authorization. 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 Smith's motion to appoint counsel, 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.

DISMISSED

* Moreover, we reject Smith's invitation to construe his motion to compel as a petition for mandamus.