

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6506

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES RICHARD MOORE, JR., a/k/a Charles R. Moore, Jr.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. James C. Fox, Senior District Judge. (4:12-cr-00032-F-1; 4:15-cv-00035-F)

Submitted: October 31, 2019

Decided: November 25, 2019

Before KING, AGEE, and RICHARDSON, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Eugene Ernest Lester, III, SHARPLESS MCCLEARN LESTER DUFFY, PA, Greensboro, North Carolina, for Appellant.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Charles Richard Moore, Jr., seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. The district court's 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 Moore 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

* After filing this appeal, Moore requested and was granted this court's authorization to file a successive § 2255 motion challenging his firearms conviction under *Johnson v. United States*, 135 S. Ct. 2551 (2015), an issue counsel also sought to raise in this appeal. Moore's successive motion remains pending in the district court and, thus, we express no opinion as to the merits of Moore's *Johnson* claim, which should be resolved in the first instance by the district court.

adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED