## UNPUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

## No. 16-6778

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DOUGLAS GLENN GRIGSBY,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Rebecca Beach Smith, Chief District Judge. (4:08-cr-00109-RBS-FBS-1)

Submitted: October 18, 2016

Before WILKINSON, KING, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Douglas Glenn Grigsby, Appellant Pro Se. Lisa Rae McKeel, Assistant United States Attorney, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

Dockets.Justia.com

Decided: October 21, 2016

PER CURIAM:

Douglas Glenn Grigsby seeks to appeal the district court's order construing his motion to recall the mandate as a successive and unauthorized 28 U.S.C. § 2255 (2012) motion and dismissing it on that basis. The order is not appealable unless justice or judge issues a certificate circuit of а 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 jurists would find that the reasonable 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 Grigsby has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately

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

## DISMISSED