

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6818

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC LAMOUNT WHITENER,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Charlotte. Max O. Cogburn, Jr.,
District Judge. (3:90-cr-00085-MOC-3; 3:14-cv-00600-MOC)

Submitted: December 15, 2016

Decided: December 19, 2016

Before SHEDD, DUNCAN, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Eric Lamount Whitener, Appellant Pro Se. Amy Elizabeth Ray,
Assistant United States Attorney, Asheville, North Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eric Lamont Whitener seeks to appeal the district court's order granting his motion for reconsideration of a prior order dismissing his 28 U.S.C. § 2255 (2012) motion as time-barred; denying his motion for recusal; denying his motion for reconsideration of a prior order denying his objection to the Government's untimely filings; and ultimately denying relief on his § 2255 motion. 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 Whitener 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.

DISMISSED