UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6872

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

GARY D'ANGELO MCDUFFIE,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:99-cr-00203-LMB-1)

Submitted: October 13, 2016 Decided: October 18, 2016

Before NIEMEYER, DUNCAN, and WYNN, Circuit Judges.

Dismissed in part, affirmed in part by unpublished per curiam opinion.

Gary D'Angelo McDuffie, Appellant Pro Se. Christopher John Catizone, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gary D'Angelo McDuffie seeks to appeal the district court's order denying, in part, and dismissing, in part, McDuffie's motion seeking habeas relief, pursuant to 28 U.S.C. § 2255 (2012), or in the alternative, for a new trial, as well as the district court's orders denying McDuffie's Fed. R. Civ. P. 59(e) motion and motion for clarification. We dismiss in part, and affirm in part.

As to the district court's orders denying McDuffie's § 2255 motion and denying McDuffie's motion for clarification of the district court's order denying habeas relief, these orders are 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 McDuffie has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal, in part.

To the extent McDuffie appeals the district court's orders denying the motion for a new trial and Rule 59(e) motion, we discern no error. We thus affirm, in part. See United States v. McDuffie, No. 1:99-cr-00203-LMB-1 (E.D. Va. Mar. 21, 2016; Apr. 28, 2016). 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