

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-7343

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEANNIE LARGENT COSBY,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Martin K. Reidinger, District Judge. (1:07-cr-00033-MR-DLH-3)

Submitted: December 20, 2016

Decided: December 22, 2016

Before GREGORY, Chief Judge, and WYNN and FLOYD, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

Jeannie Largent Cosby, 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Unpublished opinions are not binding precedent in this circuit.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:

Jeannie Largent Cosby seeks to appeal the district court's order denying and dismissing her self-styled "Motion Under 28 U.S.C. Section 5555, Amendment 794 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody."

With respect to the portion of the court's order denying Cosby's effort to receive a sentence reduction under 18 U.S.C. § 3582(c)(2) (2012) based on Amendment 794 to the Sentencing Guidelines, we have reviewed the record and find no reversible error. Accordingly, we affirm this portion of the district court's order for the reasons it stated. United States v. Cosby, No. 1:07-cr-00033-MR-DLH-3 (W.D.N.C. Aug. 22, 2016).

The portion of the district court's order construing Cosby's motion as seeking relief under 28 U.S.C. § 2255 (2012) and dismissing such request for relief as successive 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 Cosby has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal in part. 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.

AFFIRMED IN PART;
DISMISSED IN PART