

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 16-7527

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CALVIN WINBUSH, a/k/a Good Game,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:12-cr-00021-HEH-RCY-1; 3:14-cv-00724-HEH-RCY)

Submitted: March 23, 2017

Decided: May 10, 2017

Before KEENAN, WYNN, and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Calvin Winbush, Appellant Pro Se. Erik Sean Siebert, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Calvin Winbush seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) 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 Winbush has not made the requisite showing. Winbush contends that the district court's application of Sentencing Guidelines enhancements based on facts that were neither admitted by him nor found by a jury violated the rule announced in *Alleyne v. United States*, 133 S. Ct. 2151 (2013). But *Alleyne* pertains only to facts that increase a defendant's mandatory minimum sentence, and is not relevant in Winbush's case. 133 S. Ct. at 2155. Furthermore, *Alleyne* did not "correct" *United States v. Booker*, 543 U.S. 220, 233 (2005), but rather, explicitly affirmed the discretion of a district court to impose a sentence within the range prescribed by statute. 133 S. Ct. at 2163. Finally, we perceive

no debatable issue in the district court's resolution of Winbush's § 2255 motion without holding an evidentiary hearing because Winbush's claims of ineffective assistance of appellate counsel lack legal merit. *See* 28 U.S.C. § 2255(b).

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

DISMISSED