

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6716

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LARRY MAX MCDANIEL,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever, III, Chief District Judge. (5:11-cr-00252-D-1; 5:16-cv-00876-D)

Submitted: October 10, 2017

Decided: October 19, 2017

Before GREGORY, Chief Judge, and MOTZ and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Larry Max McDaniel, Appellant Pro Se. William Miller Gilmore, Roberto Francisco Ramirez, Seth Morgan Wood, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry Max McDaniel seeks to appeal the district court's order dismissing his 28 U.S.C. § 2255 (2012) motions as successive. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B) (2012); *Buck v. Davis*, 137 S. Ct. 759, 773 (2017); *Jones v. Braxton*, 392 F.3d 683, 688 (4th Cir. 2004). 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 McDaniel 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