

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6801

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARKEITH HART, a/k/a Scrap,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, District Judge. (5:14-cr-00207-FL-1; 5:16-cv-00168-FL)

Submitted: March 29, 2018

Decided: April 2, 2018

Before AGEE and DIAZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Markeith Hart, Appellant Pro Se. Tobin Webb Lathan, Donald Russell Pender, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Markeith Hart 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 Hart has not made the requisite showing.* Accordingly, we deny Hart's motion for a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts

* In making this determination, we rely in part on *United States v. Thompson*, 874 F.3d 412 (4th Cir. 2017) (prior North Carolina conviction for assault inflicting serious bodily injury constitutes a predicate crime of violence for purposes of the residual clause of U.S. Sentencing Guidelines Manual § 4B1.2), *cert. denied*, 2018 WL 692277 (U.S. Feb. 26, 2018) (No. 17-7604).

and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED