

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7002

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL J. PAVLOCK,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia,
at Clarksburg. Irene M. Keeley, Senior District Judge. (1:10-cr-00007-IMK-RWT-1;
1:14-cv-00072-IMK-RWT)

Submitted: December 21, 2017

Decided: December 28, 2017

Before WILKINSON and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit
Judge.

Dismissed by unpublished per curiam opinion.

Michael J. Pavlock, Appellant Pro Se. Andrew R. Cogar, Assistant United States
Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Clarksburg, West
Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael J. Pavlock seeks to appeal the district court's order denying his postjudgment motion for reconsideration of the court's prior order denying relief on Pavlock's 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 Pavlock has not made the requisite showing. Accordingly, we deny Pavlock's application to proceed in formal pauperis, deny a certificate of appealability, and dismiss the appeal. We dispense

* Pavlock's motion for reconsideration was filed more than 28 days after the district court entered its dismissal order and, thus, the motion did not toll Pavlock's time to appeal the district court's dismissal order. See Fed. R. App. P. 4(a)(4)(A)(iv), (vi); Fed. R. Civ. P. 59(e); see also *Houston v. Lack*, 487 U.S. 266, 276 (1988) (holding that a pro se prisoner's notice of appeal is considered filed upon delivery to prison authorities for mailing to the court).

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