

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7105

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LARRY HAILEY,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Mark S. Davis, District Judge. (4:11-cr-00013-MSD-DEM-1; 4:16-cv-00079-MSD)

Submitted: February 28, 2018

Decided: March 13, 2018

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

Dismissed by unpublished per curiam opinion.

Larry Hailey, Appellant Pro Se. Eric Matthew Hurt, Brian James Samuels, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry Hailey seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2255 (2012) motion and denying his Fed. R. Civ. P. 59(e) motion. The orders are 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 Hailey has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We also deny Hailey's request to place this appeal in abeyance pending the Supreme Court's decision in *Sessions v. Dimaya*, No. 15-1498 (argued Oct. 2, 2017). 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