

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7154

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTIAN JOHNSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Henry Coke Morgan, Jr., Senior District Judge. (4:12-cr-00083-HCM-TEM-1; 4:16-cv-00090-HCM)

Submitted: November 7, 2019

Decided: November 26, 2019

Before KEENAN, THACKER, and HARRIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Christian Johnson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Christian Johnson seeks to appeal the district court's order dismissing as untimely 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 Johnson has not made the requisite showing because this court recently held "Hobbs Act robbery constitutes a crime of violence under the force clause of Section 924(c)." *United States v. Mathis*, 932 F.3d 242, 266 (2019). Therefore, the motion does not state a debatable claim of the denial of a constitutional right. Accordingly, we remove this appeal from abeyance,¹ deny a

¹ We previously placed this appeal in abeyance for No. 15-4433, *United States v. Ali*. In light of our recent decision in *United States v. Mathis*, 932 F.3d 242, 266 (4th Cir. 2019), *petitions for cert. filed*, Nos. 19-6423, 19-6424 (U.S. Oct. 28, 2019), which is dispositive of Johnson's request for a certificate of appealability, we remove this appeal from abeyance.

certificate of appealability, and dismiss the appeal.² 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

² Johnson also argues the district court erred in failing to hold an evidentiary hearing on this issue. Because we hold Johnson has not shown a right to relief, any error in failing to hold such a hearing would not be reversible.