

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7576

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE MANUEL MORALES-HERNANDEZ, a/k/a Christian Morales-Recendez,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Michael F. Urbanski, Chief District Judge. (7:15-cr-00048-MFU-RSB-1; 7:17-cv-81284-MFU-RSB)

Submitted: April 17, 2018

Decided: April 19, 2018

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

Dismissed in part and affirmed in part by unpublished per curiam opinion.

Jose Manuel Morales-Hernandez, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jose Manuel Morales-Hernandez seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2255 (2012) motion and construing his Fed. R. Civ. P. 60(b) motion as a successive and unauthorized § 2255 motion and dismissing it on that basis. We dismiss in part and affirm in part.

With respect to the first order denying § 2255 relief, this 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, 120 (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 Morales-Hernandez has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal in part.

We affirm the portion of the appeal pertaining to the district court's dismissal of Morales-Hernandez's Rule 60(b) motion for the reasons stated by the district court. *United States v. Morales-Hernandez*, Nos. 7:15-cr-00048-MFU-RSB-1; 7:17-cv-81284-

MFU-RSB (W.D. Va. Oct. 17, 2017); *see United States v. McRae*, 793 F.3d 392 (4th Cir. 2015) (holding that movant need not obtain a certificate of appealability to appeal district court's dismissal of a Rule 60(b) motion that court construed as a successive habeas motion). 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 IN PART;
AFFIRMED IN PART*