

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-6110

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LARRY EUGENE LINGENFELTER,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (2:10-cr-00153-RAJ-TEM-1; 2:14-cv-00575-RAJ)

Submitted: July 24, 2018

Decided: August 6, 2018

Before GREGORY, Chief Judge, and KING and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jeremy Brian Gordon, JEREMY GORDON, PLLC, Mansfield, Texas, for Appellant.
Stephen Westley Haynie, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry Eugene Lingenfelter 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 Lingenfelter has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal

* We vacated the district court’s first order denying Lingenfelter’s § 2255 motion as untimely. *United States v. Lingenfelter*, 685 F. App’x 253 (4th Cir. 2017). On remand, the district court conducted an evidentiary hearing and resolved the motion on the merits.

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

DISMISSED