

UNPUBLISHED

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

No. 18-7126

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALEX MICHAEL LOCKLEAR, a/k/a Long-Leg Mike,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Wilmington. Terrence W. Boyle, Chief District Judge. (7:12-cr-00071-BO-1; 7:14-cv-
00018-BO)

Submitted: December 20, 2018

Decided: December 27, 2018

Before DIAZ and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed as modified in part and dismissed in part by unpublished per curiam opinion.

Alex Michael Locklear, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Alex Michael Locklear appeals the district court's order denying his Fed. R. Civ. P. 60(b) motion. Locklear's motion challenged both "the substance of the federal court's resolution of a claim on the merits" and "some defect in the integrity of the federal habeas proceedings," and was a mixed Rule 60(b)/28 U.S.C. § 2255 motion. *United States v. McRae*, 793 F.3d 392, 397, 400 (4th Cir. 2015).

A certificate of appealability is not required for our review of the district court's adjudication of Locklear's claims that he is innocent, and that counsel provided ineffective assistance. *Id.* Our review leads us to conclude that the district court correctly determined that these claims presented successive attacks on Locklear's conviction for which he had not obtained prefiling authorization, and that the court was therefore without jurisdiction to consider the claims on the merits. Accordingly, we affirm as modified to reflect dismissal of these claims.

The district court's denial of relief on Locklear's claim that the court erred in recharacterizing an 18 U.S.C. § 3582(c) (2012) motion as his first § 2255 motion 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 Locklear has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal as to this claim.

We therefore affirm as modified in part and deny a certificate of appealability and dismiss in part. 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.

*AFFIRMED AS MODIFIED IN PART,
DISMISSED IN PART*