

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6375

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TORRICK JOHNTRELLE RODGERS, a/k/a Trelle,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. Louise W. Flanagan, District Judge. (4:11-cr-00087-FL-1; 4:20-cv-00039-FL)

Submitted: May 6, 2020

Decided: May 8, 2020

Before MOTZ and THACKER, Circuit Judges, and SHEDD, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Torrick Johntrelle Rodgers, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Torrick Johntrelle Rodgers seeks to appeal the district court's order dismissing as successive his 28 U.S.C. § 2255 (2018) motion.* Rodgers filed his motion after a state court vacated one of his prior convictions that was used to find him a career offender.

The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B) (2018). 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) (2018). When, as here, 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. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Rodgers has made the required showing to appeal the order, and the district court erred in dismissing his § 2255 motion as successive. *See United States v. Hairston*, 754 F.3d 258, 262 (4th Cir. 2014). Accordingly, we grant his motion for a certificate of appealability, deny his other pending motions as moot, vacate the district court's order, and remand the case to the district court for further proceedings. We dispense with oral argument because the facts

* While this appeal was pending, the district court issued a second order recognizing that its prior order was erroneous and indicating it will vacate the order on remand.

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

VACATED AND REMANDED