

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 20-6639**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALTON BENN,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, Chief District Judge. (1:11-cr-00127-TDS-2; 1:15-cv-00760-TDS-LPA)

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Submitted: March 26, 2021

Decided: April 13, 2021

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Before AGEE, DIAZ, and THACKER, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Alton Benn, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Alton Benn seeks to appeal the district court's order accepting the recommendation of the magistrate judge, following an evidentiary hearing, and denying relief on Benn's 28 U.S.C. § 2255 motion. 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). 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). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). 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. *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 Benn has not made the requisite showing. Benn has not established that counsel was ineffective based on allegations that he briefly nodded off during trial or that he failed to impeach witnesses; Benn's claim regarding counsel's failure to object to the use of the 2011 Sentencing Guidelines Manual was not raised in a timely manner. Accordingly, we deny Benn's motion for a certificate of appealability; deny Benn's motions for production of documents, transcripts, and grand jury records; and dismiss the appeal. 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*