

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7607

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICO RODRIQUEZ ALLEN,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at
Huntington. Robert C. Chambers, District Judge. (3:18-cr-00033-1; 3:19-cv-00546)

Submitted: March 23, 2021

Decided: March 26, 2021

Before THACKER, QUATTLEBAUM, and RUSHING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Rico Rodriguez Allen, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Rico Rodriguez Allen seeks to appeal the district court's orders accepting the recommendation of the magistrate judge and denying relief on Allen's 28 U.S.C. § 2255 motion and denying his Fed. R. Civ. P. 59(e) motion to alter or amend the judgment. The orders are 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 Allen has not made the requisite showing. Allen seeks to challenge the district court's rejection of his claim that there was no factual basis to support his 18 U.S.C. § 924(c) conviction, asserting that there was no evidence that he used a firearm. The material elements of 18 U.S.C. § 924(c)(1) are (1) using or carrying a firearm (2) during and in relation to a drug trafficking crime or a crime of violence. *United States v. Strayhorn*, 743 F.3d 917, 922 (4th Cir. 2014). In the stipulation of facts supporting his guilty plea, Allen admitted that he had methamphetamine in his car that he intended to distribute, he possessed a firearm for

protection while distributing the methamphetamine, and he was sitting on the gun when he was removed from his car at the time of the arrest. Furthermore, at the Fed. R. Crim. P. 11 hearing, Allen admitted under oath that he had methamphetamine that he intended to distribute and that he possessed a firearm to protect the drugs. Allen's possession of the firearm in his car for protection while selling methamphetamine established that he carried the firearm during and in relation to a drug trafficking crime. Accordingly, we deny a certificate of appealability 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