

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7225

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH ROSHAUN REID,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Cameron McGowan Currie, Senior District Judge. (0:04-cr-00353-CMC-1)

Submitted: November 18, 2021

Decided: November 22, 2021

Before MOTZ, THACKER, and HARRIS, Circuit Judges.

Dismissed in part and affirmed in part by unpublished per curiam opinion.

Kenneth Roshoun Reid, Appellant Pro Se. William Kenneth Witherspoon, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenneth Roshaun Reid has noted an appeal from the district court's September 1, 2020, order denying and dismissing his motions for a sentence reduction under section 404(b) of the First Step Act of 2018, Pub. L. No. 115-391, § 404(b), 132 Stat. 5194, 5222, for compassionate release under 18 U.S.C. § 3582(c)(1)(A), and challenging the validity of his federal convictions. Reid also has noted an appeal from the district court's August 11, 2021, order denying his motions for judgment on the verdict, for application of the Fair Sentencing Act of 2010, and to compel a decision on the application of the Fair Sentencing Act of 2010. We dismiss the appeal in part and affirm in part.

Reid previously appealed the September 1 order, and this court affirmed in part and dismissed the appeal in part. *United States v. Reid*, 839 F. App'x 817, 818 (4th Cir. 2021) (No. 20-7392). Because we previously affirmed the district court's judgment in part and dismissed Reid's prior appeal in part, we dismiss this appeal of the September 1 order as duplicative.

As to the August 11 order, portions of the motions for judgment on the verdict and for application of the Fair Sentencing Act of 2010 raised direct attacks on Reid's convictions and sentence, and we conclude they were in substance a successive 28 U.S.C. § 2255 motion. The denial of such a motion 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 Reid has not made the requisite showing. Reid's claims challenging the validity of his convictions and sentence should have been construed as a successive § 2255 motion.* *See Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005); *United States v. McRae*, 793 F.3d 392, 397-99 (4th Cir. 2015). Absent prefiling authorization from this court, the district court lacked jurisdiction to entertain Reid's successive § 2255 motion. *See* 28 U.S.C. §§ 2244(b)(3), 2255(h). Accordingly, we deny a certificate of appealability and dismiss this portion of the appeal.

As to the district court's August 11 denial of the motion to compel and denial of the remaining portions of the motions for judgment on the verdict and for application of the Fair Sentencing Act of 2010, we have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *United States v. Reid*, No. 0:04-cr-00353-CMC-1 (D.S.C. Aug. 11, 2021). We dispense with oral argument

* The district court denied relief on Reid's prior § 2255 motion on the merits in 2010.

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

*DISMISSED IN PART,
AFFIRMED IN PART*