

UNPUBLISHED

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

No. 22-6024

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DUSHAWN LEVERT GARDNER, a/k/a Black, a/k/a Shawn, a/k/a Michael Archer,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. James C. Dever III, District Judge. (4:95-cr-00041-D-5)

Submitted: June 23, 2022

Decided: June 28, 2022

Before WYNN and QUATTLEBAUM, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Dushawn Levert Gardner, Appellant Pro Se. David A. Bragdon, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dushawn Levert Gardner appeals the district court's order granting in part and denying in part his 28 U.S.C. § 2255 motion and granting in part his motion for relief under § 404(b) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. Regarding the denial of relief under § 2255, the district court's 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 Gardner has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss this portion of the appeal.

Turning to the order granting partial relief on Gardner's First Step Act motion, we have reviewed the record and find no reversible error. According, we affirm as to this portion of the appeal. *United States v. Gardner*, No. 4:95-cr-00041-D-5 (E.D.N.C. Dec. 13, 2021). 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 IN PART, DISMISSED IN PART