

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 23-4043**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GREGORY W. BURWELL,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:03-cr-00203-REP-1)

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Submitted: February 27, 2024

Decided: February 29, 2024

Amended: February 29, 2024

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Before WILKINSON, WYNN, and HARRIS, Circuit Judges.

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Affirmed in part, dismissed in part by unpublished per curiam opinion.

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**ON BRIEF:** Jeremy C. Kamens, Federal Public Defender, Frances H. Pratt, Assistant Federal Public Defender, Alexandria, Virginia, Laura J. Koenig, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Richmond, Virginia, for Appellant. Joseph Attias, Assistant United States Attorney, Kaitlin Gratton Cooke, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In October 2003, a jury convicted Gregory W. Burwell of one count each of conspiracy to commit Hobbs Act robbery, attempted Hobbs Act robbery, and completed Hobbs Act robbery—all in violation of 18 U.S.C. § 1951—and two counts of brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c). The district court sentenced Burwell to an aggregate sentence of 481 months' imprisonment.<sup>1</sup>

Pursuant to 28 U.S.C. § 2244, we subsequently granted Burwell authorization to file a successive 28 U.S.C. § 2255 motion<sup>2</sup> to challenge the validity of his § 924(c) convictions in light of *United States v. Davis*, 139 S. Ct. 2319 (2019) (holding that residual clause of § 924(c) was unconstitutionally vague); *In re Thomas*, 988 F.3d 783, 789 (4th Cir. 2021) (holding that *Davis* “applies retroactively to cases on collateral review”). The district court granted Burwell’s § 2255 motion in part and vacated his § 924(c) conviction predicated on attempted Hobbs Act robbery, denied his motion in part as to Burwell’s § 924(c) conviction predicated on completed Hobbs Act robbery, and ordered a full resentencing. Following a hearing, the district court sentenced Burwell to time served, followed by five years of supervised release.

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<sup>1</sup> On appeal from the original judgment, we affirmed Burwell’s convictions and remanded for resentencing in light of *United States v. Booker*, 543 U.S. 220 (2005). *United States v. Burwell*, 162 F. App’x 203 (4th Cir. 2006) (No. 04-4200).

<sup>2</sup> Burwell’s initial 28 U.S.C. § 2255 motion was denied on the merits.

Burwell now appeals from the second amended criminal judgment and seeks to appeal the district court's partial denial of his 28 U.S.C. § 2255 motion. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating she found no meritorious grounds for appeal but questioning whether the district court erred by determining that the completed offense of Hobbs Act robbery remains a crime of violence for purposes of 18 U.S.C. § 924(c), and therefore declining to vacate Burwell's § 924(c) conviction premised on Hobbs Act robbery. Although advised of his right to file a pro se supplemental brief, Burwell has not done so. We affirm in part and dismiss in part.

When a hybrid appeal such as Burwell's is before the court, we have explained, "[i]f the petitioner seeks to appeal the order by raising arguments relating to the district court's decision whether to grant relief on his § 2255 petition, he is appealing the final order in a proceeding under § 2255 and therefore must obtain a [certificate of appealability] under [28 U.S.C.] § 2253." *United States v. Hadden*, 475 F.3d 652, 666 (4th Cir. 2007) (internal quotation marks omitted). "If, on the other hand, the petitioner seeks to appeal matters relating to the propriety of the relief granted, he is appealing a new criminal sentence and therefore need not comply with § 2253's [certificate of appealability] requirement." *Id.* Thus, we have jurisdiction to review the propriety of Burwell's resentencing following the vacatur of Burwell's § 924(c) conviction premised on attempted Hobbs Act robbery.

However, as to Burwell's challenge to the district court's denial of relief on his § 924(c) conviction premised upon completed Hobbs Act robbery, this 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*, 580 U.S. 100, 115-17 (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 Burwell has not made the requisite showing. *See United States v. Mathis*, 932 F.3d 242, 266 (4th Cir. 2019). Accordingly, we deny a certificate of appealability and dismiss the appeal as to the district court’s partial denial of Burwell’s § 2255 motion.

In accordance with *Anders*, we have reviewed the entire record and have found no meritorious grounds for appeal. Accordingly, we affirm in part, deny a certificate of appealability, and dismiss in part. This court requires that counsel inform Burwell, in writing, of his right to petition the Supreme Court of the United States for further review. If Burwell requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move this court for leave to withdraw from representation. Counsel’s motion must state that a copy thereof was served on Burwell. 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 in the decisional process.

*AFFIRMED IN PART,  
DISMISSED IN PART*