

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6156

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC MARIO BYERS,

Defendant - Appellant.

No. 23-6238

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC MARIO BYERS,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, Senior District Judge. (2:02-cr-00077-RBS-1; 2:23-cv-00078-RBS)

Submitted: July 25, 2023

Decided: July 28, 2023

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

Affirmed in part, dismissed in part by unpublished per curiam opinion.

Eric Mario Byers, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eric Mario Byers appeals the district court's orders denying his motion for early termination of supervised release under 18 U.S.C. § 3583(e)(1), denying his second 28 U.S.C. § 2255 motion as successive and unauthorized, and declining to consider Byers' motion declaring supervised release unconstitutional. We affirm in part and dismiss in part.

We conclude that the district court did not abuse its discretion in considering Byers' offense conduct in denying his motion for early termination of supervised release. We thus affirm that part of the court's order. Byers' appeal from the court's order denying his second § 2255 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, as here, 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 Byers has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss that part of the appeal.

Byers' motion challenging the constitutionality of supervised release should have been construed as another challenge to the legality of Byers' sentence and brought under § 2255. Because Byers did not receive authorization from this court to file a second or

successive § 2255 motion, the district court was without jurisdiction to consider it. We thus deny a certificate of appealability and dismiss this part of the appeal.

Accordingly, we affirm in part, deny a certificate of appealability, and dismiss in part. We deny Byers' motion and supplemental motion for a limited remand to consider his constitutional challenge to supervised release. 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*