

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6436

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY DEPREE SMITH, a/k/a Straight,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Wilmington. Terrence W. Boyle, District Judge. (7:18-cr-00016-BO-1; 7:22-cv-00037-
BO)

Submitted: September 28, 2023

Decided: October 3, 2023

Before NIEMEYER, THACKER, and RUSHING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Anthony Depree Smith, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Anthony Depree Smith seeks to appeal the district court's order denying relief on his counseled 28 U.S.C. § 2255 motion. The 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 Smith has not made the requisite showing.* 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

* We decline to consider the ineffective assistance of counsel claims related to Smith's sentence that are raised for the first time on appeal. *See In re Under Seal*, 749 F.3d 276, 285 (4th Cir. 2014).