

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 02-7939**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAMES EDWARD PRATT, a/k/a Phillip Pratt,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Durham. N. Carlton Tilley, Jr., Chief District Judge. (CR-00-27, CA-02-139-1)

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Submitted: March 6, 2003

Decided: March 14, 2003

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Before WILKINSON, MICHAEL, and KING, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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James Edward Pratt, Appellant Pro Se. Sandra Jane Hairston, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

James Edward Pratt seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his motion filed under 28 U.S.C. § 2255 (2000) on the grounds it was untimely. An appeal may not be taken from the final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2255 motion solely on procedural grounds, a certificate of appealability will not issue unless the movant can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 534 U.S. 941 (2001). We have independently reviewed the record and conclude that Pratt has not made the requisite showing. See Miller-El v. Cockrell, \_\_\_ U.S. \_\_\_, 2003 WL 431659, at \*10 (U.S. Feb. 25, 2003) (No. 01-7662). 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 the court and argument would not aid the decisional process.

DISMISSED