

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7860

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PAUL HORNER EMORY, III,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, Senior District Judge. (7:03-cr-00014-BR-1)

Submitted: June 1, 2010

Decided: June 4, 2010

Before GREGORY, SHEDD, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Paul Horner Emory, III, Appellant Pro Se. Steve R. Matheny, Thomas B. Murphy, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Paul Horner Emory, III, seeks to appeal the district court's order denying relief on his "Motion for Relief from Constitutional Violations," which the district court construed as a motion under 28 U.S.C.A. § 2255 (West Supp. 2009), and denied on the ground that Emory failed to obtain authorization to file it. Emory also seeks to appeal the district court's order denying reconsideration. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006). 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) (2006). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). 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. Slack, 529 U.S. at 484-85. We have independently reviewed the record and conclude that Emory has not made the requisite showing. Accordingly, we deny

a certificate of appealability and dismiss the appeal. We deny as moot Emory's motion for a limited remand and 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