

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-7297

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE NACACIO AMU, a/k/a Amu, a/k/a Sld Dft 3:97-40-11,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, District Judge. (3:97-cr-00040-FDW-11; 3:10-cv-00381-FDW)

Submitted: December 21, 2010

Decided: January 4, 2011

Before NIEMEYER and KEENAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Jose Nacacio Amu, Appellant Pro Se. Michael E. Savage, Jennifer A. Youngs, Assistant United States Attorneys, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jose Amu appeals the district court's order treating his 18 U.S.C. § 3582(c) (2006) motion for a reduction in sentence as a successive 28 U.S.C.A. § 2255 (West Supp. 2010) motion and dismissing it on that basis. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006); Jones v. Braxton, 392 F.3d 683, 691 (4th Cir. 2004). 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 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 v. McDaniel, 529 U.S. 473, 484-85. We have independently reviewed the record and conclude that Amu 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 the court and argument would not aid the decisional process.

DISMISSED