

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6013

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TIAYON KARDELL EVANS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (2:04-cr-00099-RAJ-1; 2:10-cv-00601-RAJ)

Submitted: June 30, 2011

Decided: July 6, 2011

Before WILKINSON, DUNCAN, and WYNN, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Tiayon Kardell Evans, Appellant Pro Se. Sherrie Scott Capotosto, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tiayon Kardell Evans seeks to appeal the district court's order and judgment denying his motion for recusal and construing two motions challenging his convictions as successive 28 U.S.C.A. § 2255 (West Supp. 2010) motions and dismissing them without prejudice for lack of subject matter jurisdiction. We affirm in part and dismiss in part.

Turning first to the denial of the recusal motion, we have reviewed the record and find no reversible error. Accordingly, we affirm the denial of Evans' motion for recusal for the reasons stated by the district court. United States v. Evans, Nos. 2:04-cr-00099-RAJ-1; 2:10-cv-00601-RAJ (E.D. Va. filed Dec. 1, 2010 & entered Dec. 7, 2010).

As for the order and judgment construing Evans' motions challenging his convictions as successive § 2255 motions, the order and judgment are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (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 Evans has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal from the dismissal of the successive § 2255 motions.

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.

AFFIRMED IN PART,
DISMISSED IN PART