

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-7676

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENYATTA SYKES,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. James C. Fox, Senior District Judge. (4:09-cr-00015-F-1; 4:11-cv-00104-F)

Submitted: February 16, 2012

Decided: February 23, 2012

Before SHEDD, KEENAN, and WYNN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Kenyatta Sykes, Appellant Pro Se. S. Katherine Burnette, Joshua Bryan Royster, OFFICE OF THE UNITED STATES ATTORNEY, Stephen Aubrey West, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenyatta Sykes seeks to appeal the district court's order dismissing as untimely his 28 U.S.C.A. § 2255 (West Supp. 2011) motion. The order is 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 Sykes has not made the requisite showing. Accordingly, we grant Sykes's motion to seal, deny his motion for 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