

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-6412

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN MARK RICHARDSON,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., Senior District Judge. (1:04-cr-00090-NCT-1; 1:11-cv-00688-NCT-JEP)

Submitted: June 21, 2012

Decided: June 26, 2012

Before GREGORY, SHEDD, and DAVIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

John Mark Richardson, Appellant Pro Se. Angela Hewlett Miller, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Mark Richardson seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his "Rule 36 Violation." Because Richardson sought to challenge his sentence, the district court construed the action as a successive motion under 28 U.S.C.A. § 2255 (West Supp. 2012) and dismissed the action because Richardson failed to first obtain authorization from this court to file a successive § 2255 motion. 28 U.S.C.A. § 2255(h). 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 Richardson 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