

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7184

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES EDWARD BLACKMON,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Margaret B. Seymour, Chief District Judge. (0:03-cr-01004-MBS-1)

Submitted: November 20, 2012

Decided: November 27, 2012

Before TRAXLER, Chief Judge, and SHEDD and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jeffrey Michael Brandt, ROBINSON & BRANDT, PSC, Covington, Kentucky, for Appellant. William Kenneth Witherspoon, Assistant United States Attorney, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Edward Blackmon seeks to appeal the district court's order denying relief on his self-styled 28 U.S.C. § 1651 (2006) motion, which Blackmon concedes the district court correctly treated as a 28 U.S.C.A. § 2255 (West Supp. 2012) motion. Blackmon also seeks to appeal the district court's order denying his Fed. R. Civ. P. 59(e) motion.* The orders 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

* Although Blackmon styled his motion a Fed. R. Civ. P. 60(b)(1) motion, because the motion was filed within twenty-eight days of the district court's dismissal order and sought reconsideration of that order, we treat the motion as a Rule 59(e) motion.

claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

After confining our review to the issues raised in Blackmon's informal brief, see 4th Cir. R. 34(b), we conclude that Blackmon 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