

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6025

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID GLENN GREEN,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Richard L. Voorhees, District Judge. (5:00-cr-00034-RLV-1); Graham C. Mullen, Senior District Judge. (5:05-cv-00205-GCM)

Submitted: May 23, 2013

Decided: May 28, 2013

Before MOTZ and AGEE, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

David Glenn Green, Appellant Pro Se. Amy Elizabeth Ray, Assistant United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Glenn Green seeks to appeal the district court's orders denying relief on his Fed. R. Civ. P. 60(b) motion for reconsideration of his conviction and his subsequent motion for reconsideration. The district court correctly ruled that the relief that Green sought was only available by way of a 28 U.S.C.A. § 2255 (West Supp. 2012) motion. Finding that Green had already filed a § 2255 motion, the district court denied his motion as successive. 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 claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Green 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 this court and argument would not aid the decisional process.

DISMISSED