

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6212

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VICTOR ALEXANDER HOLT,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, Chief District Judge. (5:11-cr-00002-D-1; 5:12-cv-00075-D)

Submitted: May 13, 2015

Decided: May 18, 2015

Before SHEDD, DIAZ, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Victor Alexander Holt, Appellant Pro Se. Kristine L. Fritz, OFFICE OF THE UNITED STATES ATTORNEY, Jennifer P. May-Parker, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Victor Alexander Holt seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) 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) (2012). 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) (2012). 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.

As the lone issue presented in this appeal is squarely foreclosed by our recent decision in United States v. Foote, ___ F.3d ___, 2015 WL 1883538 (4th Cir. Apr. 27, 2015), we conclude that Holt has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny Holt's motions for appointment of counsel, and dismiss the appeal. We also deny

Holt's motion for relief pursuant to the panel decision in Whiteside v. United States, 748 F.3d 541 (4th Cir. 2014), which has been superseded by the opinion of the en banc court, see Whiteside v. United States, 775 F.3d 180 (4th Cir. 2014), and United States v. Simmons, 649 F.3d 237 (4th Cir. 2011), because a Simmons-based challenge to a federal prisoner's sentence is not cognizable in a § 2255 proceeding. See Foote, 2015 WL 1883538, at *1, *12. 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