

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6313

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TONY VINES, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, District Judge. (5:10-cr-00048-FL-1; 5:11-cv-00484-FL)

Submitted: January 13, 2015

Decided: March 2, 2015

Before NIEMEYER, KEENAN, and WYNN, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

Tony Vines, Jr., Appellant Pro Se. Kristine L. Fritz, Eric David Goulian, Joshua Bryan Royster, 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Unpublished opinions are not binding precedent in this circuit.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:

Tony Vines, Jr., seeks to appeal the district court's order adopting in part the recommendation of the magistrate judge and granting in part and denying in part his 28 U.S.C. § 2255 (2012) motion and has moved for appointment of counsel and to amend and supplement his informal appellate brief. The district court granted Vines relief on his claim seeking resentencing under the Fair Sentencing Act of 2010, denied relief on his remaining claims, and granted a certificate of appealability on the issue of whether the purpose of Vines' plea agreement was frustrated by this court's decision in United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). We have reviewed the record and find that the district court correctly ruled that Simmons did not frustrate the purpose of Vines' plea agreement. Accordingly, we grant Vines' motions to amend and supplement his informal appellate brief and affirm the district court's order, in part. United States v. Vines, Nos. 5:10-cr-00048-FL-1; 5:11-cv-00484-FL (E.D.N.C. Feb. 5, 2013).

The remainder of the district court's order denying § 2255 relief* is not appealable unless a circuit justice or

* We do not consider the portion of the district court's order granting § 2255 relief in part because Vines confines his appeal to portions of the district court's order denying § 2255 relief.

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). 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 Vines has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny Vines' motions to appoint counsel, and dismiss the appeal, in part. 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.

AFFIRMED IN PART;
DISMISSED IN PART