

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7129

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GEORGE WILLIE DAVIS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Raymond A. Jackson, District Judge. (4:08-cr-00133-RAJ-TEM-1; 4:13-cv-00090-RAJ)

Submitted: October 23, 2013

Decided: November 5, 2013

Before DUNCAN, AGEE, and WYNN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

George Willie Davis, Appellant Pro Se. Howard Jacob Zlotnick, Assistant United States Attorney, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

George Willie Davis seeks to appeal the district court's order dismissing as untimely* his 28 U.S.C.A. § 2255 (West Supp. 2013) 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) (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

* The district court's order dismissed Davis' § 2255 motion for failure to obtain authorization from this court to file a successive motion pursuant to 28 U.S.C. § 2244 (2006), or, in the alternative, as untimely. Although we denied Davis' § 2244 motion on December 14, 2012, in hindsight, our order should have clarified that the motion was "denied as unnecessary" on the ground that Davis had not filed an initial § 2255 motion. Because we conclude that Davis' motion before the district court was not successive, we consider here only the district court's alternative finding that Davis' § 2255 motion was untimely filed.

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 Davis 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