

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-7661**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHESTER EUGENE DOWNING,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Elizabeth City. James C. Fox, Senior District Judge. (2:08-cr-00016-F-2; 2:11-cv-00057-F)

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Submitted: February 19, 2014

Decided: February 25, 2014

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Before KING and WYNN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Chester Eugene Downing, Appellant Pro Se. Jennifer P. May-Parker, Assistant United States Attorney, Tobin Webb Lathan, Seth Morgan Wood, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Chester Eugene Downing seeks to appeal the district court's order construing his Motion to Dismiss Count Three as a motion under 28 U.S.C. § 2255 (2012) and dismissing it as successive. 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.

We have independently reviewed the record and conclude that Downing 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