

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-6894

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID DONNELL MARTIN, a/k/a Lil D,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Richard L. Voorhees, District Judge. (5:06-cr-00037-RLV-DCK-13; 5:11-cv-00144-RLV)

Submitted: August 28, 2014

Decided: September 3, 2014

Before WILKINSON, KING, and DUNCAN, Circuit Judges.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

David Donnell Martin, Appellant Pro Se. Amy Elizabeth Ray, Assistant United States Attorney, Asheville, North Carolina; Melissa Louise Rikard, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Donnell Martin 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. We have independently reviewed the record and conclude that Martin has not made the requisite showing.

Martin also filed a motion to compel specific performance, asserting that the Government breached the plea agreement by declining to file a motion pursuant to U.S. Sentencing Guidelines Manual § 5K1.1 for substantial assistance. Because the plea agreement provided that such a motion was in

the sole discretion of the Government, and Martin makes no allegation that the prosecutor acted with an unconstitutional motive, see Wade v. United States, 504 U.S. 181, 185 (1992), we affirm the district court's denial of the motion to compel specific performance.

Accordingly, we deny a certificate of appealability, dismiss the appeal in part, and affirm 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.

DISMISSED IN PART;
AFFIRMED IN PART