

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6148

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HERMAN LEE TATE,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina,
at Statesville. Frank D. Whitney, Chief District Judge. (5:98-cr-00125-FDW-9)

Submitted: May 31, 2019

Decided: June 11, 2019

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

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Herman Lee Tate, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Herman Lee Tate appeals the district court's order denying his motion to clarify judgment and his motion to correct alleged clerical errors in his presentence investigation report. We affirm in part and dismiss in part.

With respect to the motion to clarify, we have reviewed the record and find no reversible error. We therefore affirm this portion of the court's order for the reasons stated by the district court. *United States v. Tate*, No. 5:98-cr-00125-FDW-9 (W.D.N.C. Jan. 3, 2019).

With respect to the motion to correct clerical errors, the district court properly construed the motion as filed pursuant to 28 U.S.C. § 2255 (2012). 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 Tate has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss this portion of 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.

*AFFIRMED IN PART,
DISMISSED IN PART*