

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7531

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLIE BURLEY,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Irene M. Keeley, Chief District Judge. (CR-94-59, CA-97-186-1)

Submitted: February 26, 2003

Decided: March 12, 2003

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

Dismissed by unpublished per curiam opinion.

Willie Burley, Appellant Pro Se. Thomas Oliver Mucklow, Assistant United States Attorney, Martinsburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Willie Burley seeks to appeal the district court's order denying relief on his motion filed under Fed. R. Civ. P. 60(b)(4) and construed by the district court as a successive 28 U.S.C. § 2255 motion.* To be entitled to a certificate of appealability, Burley must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). When a district court dismisses solely on procedural grounds, the movant "must demonstrate both (1) 'that jurists of reason would find it debatable whether the [motion] states a valid claim of the denial of a constitutional right,' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473 (2000)), cert. denied, 534 U.S. 941 (2001). Upon examination of Burley's motion, we cannot conclude that reasonable jurists would find it debatable whether the district court correctly denied the motion. 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 the court and argument would not aid the decisional process.

DISMISSED

* Burley does not appeal, and therefore we do not address, whether the court erred in construing his Rule 60(b)(4) motion as a successive § 2255 motion.