

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 22-6586**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KEVIN SMITH,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., District Judge. (3:14-cr-00017-RJC-DCK-6; 3:19-cv-00018-RJC)

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Submitted: November 22, 2022

Decided: November 29, 2022

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Before HARRIS and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Kevin Smith, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kevin Smith seeks to appeal the district court's order construing his request for judicial notice as a 28 U.S.C. § 2255 motion and dismissing it as successive and unauthorized. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B). 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). When, as here, 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. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Smith 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*