

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6925

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRICK DONNELL MABRY, a/k/a Mayberry,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, Chief District Judge. (5:12-cr-00275-D-1; 5:15-cv-00578-D)

Submitted: December 8, 2016

Decided: December 20, 2016

Before NIEMEYER and KING, Circuit Judges, and DAVIS, Senior Circuit Judge.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

Derrick Donnell Mabry, Appellant Pro Se. Eric David Goulian, Seth Morgan Wood, OFFICE OF THE UNITED STATES ATTORNEY, Patrick Benton Weede, Special Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick Donnell Mabry seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion and his 18 U.S.C. § 3582(c)(2) (2012) motion. After a review of the record, we dismiss in part and affirm in part.

Regarding his § 2255 motion, this portion of 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. McDaniels, 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 Mabry has not made the requisite showing. Accordingly, we deny

a certificate of appealability and dismiss the appeal of the denial of Mabry's § 2255 motion.

Turning to Mabry's § 3582(c)(2) motion, we conclude that the district court did not abuse its discretion in denying the motion. Accordingly, we affirm for the reasons stated by the district court. United States v. Mabry, No. 5:12-cr-00275-D-1 (E.D.N.C. June 28, 2016). 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