

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7052

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VIVEK SHAH,

Defendant - Appellant.

No. 17-7053

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VIVEK SHAH,

Defendant - Appellant.

Appeals from the United States District Court for the Southern District of West Virginia,
at Beckley. Irene C. Berger, District Judge. (5:12-cr-00172-1; 5:13-cr-00127-1;
5:15-cv-07542)

Submitted: November 30, 2018

Decided: March 13, 2019

Before WYNN and DIAZ, Circuit Judges, and SHEDD, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Vivek Shah, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Vivek Shah seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing as untimely his 28 U.S.C. § 2255 (2012) motion, and a subsequent order denying reconsideration. The orders are 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 Shah has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny as moot Shah's motion to compel the district court to grant or 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