

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6391

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CURTIS SULLIVAN,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Timothy M. Cain, District Judge. (8:13-cr-00241-TMC-1; 8:16-cv-01550-TMC)

Submitted: September 26, 2019

Decided: October 22, 2019

Before WILKINSON and WYNN, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Curtis Sullivan, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Curtis Sullivan seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. 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 Sullivan has not made the requisite showing. Although the district court's procedural conclusion regarding timeliness of the § 2255 motion may be debatable in light of the recent decisions in *United States v. Davis*, 139 S. Ct. 2319 (2019), and *United States v. Simms*, 914 F.3d 229 (4th Cir. 2019) (en banc), *petition for cert. filed*, No. 18-1338 (U.S. Apr. 24, 2019), Sullivan has not stated a debatable claim of the denial of a constitutional right. The predicate offenses underlying Sullivan's 18 U.S.C. § 924(c) (2012) convictions are substantive Hobbs Act robbery convictions, which are categorically crimes of violence. *United States v. Mathis*, 932 F.3d 242, 265-66 (4th Cir. 2019). And although Sullivan was not convicted of Hobbs Act robbery, he admitted to those robberies as the predicate offenses of his § 924(c)

convictions. *See United States v. Nelson*, 484 F.3d 257, 261 (4th Cir. 2007). 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