

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6684

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MALCOLM JERMAINE CARRY,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:04-cr-00167-BO-1; 5:07-cv-00448-BO)

Submitted: May 3, 2010

Decided: May 13, 2010

Before NIEMEYER, MOTZ, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Malcolm Jermaine Carry, Appellant Pro Se. Edward D. Gray, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Malcolm Jermaine Carry seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2009) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006). 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) (2006). 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 Carry has not made the requisite showing. Accordingly, we deny Carry's motion for a certificate of appealability and dismiss the appeal. We deny Carry's motion to appoint counsel and 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