UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6356

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHNNY LEE FELDER, a/k/a Cool Daddy,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Florence. Terry L. Wooten, District Judge. (4:03-cr-00283-TLW-1; 4:07-cv-70067-TLW)

Submitted: June 1, 2010 Decided: June 9, 2010

Before GREGORY, SHEDD, and KEENAN, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

Johnny Lee Felder, Appellant Pro Se. Alfred William Walker Bethea, Jr., Assistant United States Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Johnny Lee Felder, a federal prisoner, appeals the district court's order denying relief on his petition for writ of coram nobis or audita querela brought under 28 U.S.C. § 1651 (2006). We have reviewed the record and find no reversible error. Accordingly, we affirm the denial of a petition for coram nobis or audita querela for the reasons stated by the district court. See United States v. Felder, No. 4:03-cr-00283-TLW-1 (S.D.C. Jan. 28, 2010).

The district court also considered Felder's motion as a Fed. R. Civ. P. 60(b) motion challenging the prior denial of his motion under 28 U.S.C.A. § 2255 (West Supp. 2009), and denied relief. That 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) (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 Felder has not made the requisite showing. Accordingly, we dismiss the portion of the appeal construing Felder's claims as a Rule 60(b) motion relating to the prior denial of his 28 U.S.C.A. § 2255 motion.

We 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.

AFFIRMED IN PART;
DISMISSED IN PART