

APPENDIX A

OPINION OF THE FOURTH CIRCUIT COURT OF APPEALS

FILED: July 30, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6236
(7:92-cr-00135-JPJ-RSB-1)
(7:16-cv-81264-JPJ-RSB)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JIMMY LAWRENCE NANCE

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-6236

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JIMMY LAWRENCE NANCE,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James P. Jones, District Judge. (7:92-cr-00135-JPJ-RSB-1; 7:16-cv-81264-JPJ-RSB)

Submitted: July 26, 2018

Decided: July 30, 2018

Before GREGORY, Chief Judge, FLOYD, Circuit Judge, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Jimmy Lawrence Nance, Appellant Pro Se. Jean Barrett Hudson, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jimmy Lawrence Nance seeks to appeal the district court's order construing his postjudgment motions as successive and unauthorized 28 U.S.C. § 2255 (2012) motions and dismissing them on that basis. 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 Nance has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny Nance's motion for appointment of counsel, 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

FILED: September 14, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6236
(7:92-cr-00135-JPJ-RSB-1)
(7:16-cv-81264-JPJ-RSB)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JIMMY LAWRENCE NANCE

Defendant - Appellant

STAY OF MANDATE UNDER
FED. R. APP. P. 41(d)(1)

Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc or motion to stay. In accordance with Rule 41(d)(1), the mandate is stayed pending further order of this court.

/s/ Patricia S. Connor, Clerk

APPENDIX B

OPINION OF THE FOURTH CIRCUIT DENYING EN BANC REHEARING

FILED: October 9, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6236
(7:92-cr-00135-JPJ-RSB-1)
(7:16-cv-81264-JPJ-RSB)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JIMMY LAWRENCE NANCE

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX C
DENIAL OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA)
)
) Case No. 7:92CR00135
)
 v.) ORDER
)
 JIMMY LAWRENCE NANCE,) By: James P. Jones
) United States District Judge
 Defendant.)

For the reasons stated in the Opinion accompanying this Order, it is
ORDERED that the defendant's Motion for Reconsideration, ECF No. 307,
Motion for Leave to Amend His Pending Motion for Reconsideration to Add New
Authority, ECF No. 309, and Request for Judicial Notice and Motion for
Clarification, ECF No. 310, are CONSTRUED and DISMISSED without prejudice
as successive Motions to Vacate, Set Aside, or Correct Sentence pursuant to 28
U.S.C. § 2255(h). Based upon the court's finding that the defendant has not made
the requisite showing of denial of a substantial right, it is further **ORDERED** that a
certificate of appealability is DENIED.

ENTER: March 2, 2018

/s/ James P. Jones
United States District Judge

A TRUE COPY, TESTE:
JULIA C. DUDLEY, CLERK
BY: *[Signature]*
DEPUTY CLERK