

FILED: July 24, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6342
(3:11-cr-00404-FDW-DSC-1)
(3:16-cv-00040-FDW)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ZONTA TAVARUS ELLISON

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

APPENDIX A

UNPUBLISHED

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

No. 18-6342

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ZONTA TAVARUS ELLISON,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, Chief District Judge. (3:11-cr-00404-FDW-DSC-1; 3:16-cv-00040-FDW)

Submitted: July 19, 2018

Decided: July 24, 2018

Before WILKINSON, MOTZ, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Zonta Tavarus Ellison, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

APPENDIX A1

PER CURIAM:

Zonta Tavarus Ellison seeks to appeal the district court's order denying his motion for relief under Fed. R. Civ. P. 60(b)(6) and Fed. R. Civ. P. 10(c), in which he sought relief from this court's judgment dismissing his appeal of the district court's order denying 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 Ellison has not made the requisite showing. 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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-40-FDW
(3:11-cr-404-FDW-DSC-1)

ZONTA TAVARUS ELLISON,)
)
Petitioner,)
)
vs.) ORDER
)
UNITED STATES OF AMERICA,)
)
Respondent.)

THIS MATTER comes before the Court on Petitioner's "Motion for Relief under Rule 60(b)(6) and 10(c)." (Doc. No. 13).

On January 21, 2016, Petitioner filed the underlying motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. On April 27, 2016, this Court denied and dismissed Petitioner's motion to vacate. (Doc. No. 5). By order dated October 20, 2016, the Fourth Circuit Court of Appeals denied Petitioner's motion for a certificate of appealability and dismissed Petitioner's appeal. (Doc. No. 10). On February 6, 2018, Petitioner filed the pending motion, in which he seeks to have this Court set aside its prior judgment because Petitioner contends that he never received notice from the Fourth Circuit when it dismissed his appeal by order dated October 20, 2016, and he was therefore barred from filing a timely motion for rehearing en banc with the Fourth Circuit, or from filing a petition for writ of certiorari with the Supreme Court.

The Court will deny Petitioner's motion, as the relief he seeks cannot be cured by this Court setting aside its prior judgment. Petitioner must file a motion for extension of time or otherwise seek relief directly from the Fourth Circuit Court of Appeals in order to obtain the relief he

appears to seek through this motion.

IT IS, THEREFORE, ORDERED that:

(1) Petitioner's Motion for Relief under Rule 60(b)(6) and 10(c), (Doc. No. 13), is

DENIED.

Signed: February 26, 2018



Frank D. Whitney
Chief United States District Judge


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from this filing is
available in the
Clerk's Office.**