

APPENDIX A

UNPUBLISHED

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

No. 19-6009

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID FURTADO GRAY,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Catherine C. Blake, District Judge. (1:95-cr-00364-CCB-1; 1:16-cv-02259-CCB)

Submitted: December 10, 2019

Decided: December 23, 2019

Before NIEMEYER and THACKER, Circuit Judges, and SHEDD, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

David Furtado Gray, Appellant Pro Se. Jason Daniel Medinger, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Furtado Gray 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 Gray 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

APPENDIX B

ENTERED
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

DAVID GRAY

Civil No.: CCB-16-2259
Criminal No. CCB-95-364

ORDER

Federal prison inmate David Gray was granted permission by the Fourth Circuit to file a second or successive petition under 28 U.S.C. § 2255 alleging that the decision in *Johnson v. United States*, 135 S.Ct. 2551 (2015) affects the validity of his conviction. Gray was convicted of violent crime (first degree murder) in aid of racketeering, 18 U.S.C. § 1959(a)(1), (Count One); and possession of a firearm in furtherance of a crime of violence, 18 U.S.C. § 924(c), (Count Three). In 1996 he was sentenced to life imprisonment on Count One and five years' consecutive on Count Three. His convictions were affirmed on appeal. *U.S. v. Gray*, 137 F.3d 765 (4th Cir. 1998).

Gray now challenges his conviction and sentence under 18 U.S.C. § 924(c). The crime of violence underlying the 924(c) conviction, however, was first degree murder in aid of racketeering, which qualifies under the "force" clause and does not rely on the "residual" clause. *United States v. Moreno-Aguilar*, 198 F.Supp.3d 548 (D. Md. 2016); *Cousins v. United States*, 198 F.Supp.3d 621 (E.D. Va. 2016). Accordingly, Gray is not entitled to any relief under 28 U.S.C. § 2255.

It is hereby Ordered that:

1. Gray's petition is Denied and Dismissed without an evidentiary hearing;
2. No certificate of appealability is issued;

3. the Clerk shall CLOSE this civil case; and
4. the Clerk shall SEND a copy of this Order to David Gray and to counsel of record.

11/7/18
Date

/s/ CCB
Catherine C. Blake
United States District Judge

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