

Neutral

As of: June 11, 2014 4:27 PM EDT

United States v. Simmons

United States Court of Appeals for the Fourth Circuit
April 28, 2011, Submitted; May 2, 2011, Decided
No. 10-7508

Reporter: 426 Fed. Appx. 207; 2011 U.S. App. LEXIS 8948

UNITED STATES OF AMERICA, Plaintiff - Appellee, v.
ROBERT SIMMONS, Defendant - Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Subsequent History: US Supreme Court certiorari denied by *Simmons v. United States, 2011 U.S. LEXIS 7053 (U.S., Oct. 3, 2011)*

Prior History: **[**1]** Appeal from the United States District Court for the District of Maryland, at Baltimore. (1:07-cr-00334-CCB-1; 1:10-cv-01017-CCB). Catherine C. Blake, District Judge.
Simmons v. United States, 2010 U.S. Dist. LEXIS 107678 (D. Md., Oct. 7, 2010)

Disposition: DISMISSED.

Core Terms

deny relief, certificate, denial of constitutional rights, district court, slack

Counsel: Robert Simmons, Appellant, Pro se.

Melanie Lisa Glickson, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Judges: Before DAVIS, KEENAN, and WYNN, Circuit Judges.

Opinion

[*207] PER CURIAM:

Robert Simmons seeks to appeal the district court's order denying relief on his *28 U.S.C.A. § 2255 (West Supp. 2010)* 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, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000)*; see *Miller-El v. Cockrell, 537 U.S. 322, 336-38, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003)*. When the district court denies relief on procedural grounds, the prisoner must demonstrate both that **[**2]** 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 Simmons 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 the court and argument would not aid the decisional process.

DISMISSED