

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7656

MARCUS DORAN BARLEY,

Petitioner - Appellant,

v.

ERIC WILSON, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (1:13-cv-01111-JCC-IDD)

Submitted: December 19, 2013

Decided: December 24, 2013

Before SHEDD, DAVIS, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Marcus Doran Barley, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marcus Doran Barley seeks to appeal the district court's order construing his 28 U.S.C.A. § 2241 (West 2006 & Supp. 2013) petition as a 28 U.S.C.A. § 2255 (West Supp. 2013) motion and dismissing it for failure to first obtain authorization from this court to file a successive § 2255 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) (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). 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 Barley has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in

forma pauperis, 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