

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6137

DARRYL T. BROWN,

Petitioner - Appellant,

v.

LINDA THOMAS, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Henry M. Herlong, Jr., Senior District Judge. (0:15-cv-03079-HMH)

Submitted: August 19, 2016

Decided: September 1, 2016

Before TRAXLER and DUNCAN, Circuit Judges, and DAVIS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Darryl T. Brown, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Darryl T. Brown seeks to appeal from the district court's order accepting the recommendation of the magistrate judge, construing his 28 U.S.C. § 2241 (2012) petition as a 28 U.S.C. § 2255 (2012) motion and transferring it to the Eastern District of Tennessee. Because the claims Brown raised in his motion do not fit within the savings clause of § 2255, we hold that the district court properly found that Brown's motion could only be considered under § 2255. See In re Jones, 226 F.3d 328, 333 (4th Cir. 2000). Thus, the transfer 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 Brown 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