UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 17-6323

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TORIAN GAITHER,

                Petitioner - Appellant,

      v.

DAVID ZOOK, Warden,

                Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, District Judge. (3:16-cv-00064-MHL-RCY)

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Submitted: May 25, 2017   Decided: May 31, 2017

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Before MOTZ, THACKER, and HARRIS, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Torian Gaither, Appellant Pro Se. Elizabeth Kiernan Fitzgerald, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Torian Gaither seeks to appeal the district court's order accepting the amended recommendation of the magistrate judge and denying relief on Gaither's 28 U.S.C. § 2254 (2012) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (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 petition 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 Gaither has not made the requisite showing. Accordingly, we deny Gaither's motion for a transcript at government expense, 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