

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7369

MARLON RIVERA,

Petitioner - Appellant,

v.

WARDEN TYGER RIVER CORRECTIONAL INSTITUTION,

Respondent - Appellee,

and

STATE OF SOUTH CAROLINA,

Respondent.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Mary G. Lewis, District Judge. (5:17-cv-02011-MGL)

Submitted: December 19, 2017

Decided: December 22, 2017

Before SHEDD, AGEE, and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Marlon Rivera, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marlon Rivera seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing his 28 U.S.C. § 2254 (2012) petition without prejudice as an unauthorized successive 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 Rivera has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny Rivera's motion for transcripts at government expense, 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