

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6987

VICTOR LIVERMON,

Petitioner - Appellant,

v.

HAROLD W. CLARKE,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at
Richmond. M. Hannah Lauck, District Judge. (3:19-cv-00324-MHL-RCY)

Submitted: November 19, 2019

Decided: November 22, 2019

Before WILKINSON and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit
Judge.

Dismissed by unpublished per curiam opinion.

Victor Livermon, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Victor Livermon seeks to appeal the district court's order dismissing without prejudice his 28 U.S.C. § 2254 (2012) petition for failure to pay the filing fee. 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 Livermon has not made the requisite showing. Moreover, Livermon has since paid the filing fee and the district court docketed Livermon's 28 U.S.C. § 2254 petition as a new civil action. See *Livermon v. Clarke*, No. 3:19-cv-00487-MHL-RCY. Accordingly, Livermon has received the relief he seeks on appeal. We therefore deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal as moot. 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