

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6056

WILLIE CLARENCE ALSTON,

Petitioner - Appellant,

v.

ALVIN W. KELLER,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, Chief District Judge. (5:09-hc-02038-FL)

Submitted: May 20, 2010

Decided: May 27, 2010

Before WILKINSON, NIEMEYER, and DAVIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Willie Clarence Alston, Appellant Pro Se. Mary Carla Hollis, Assistant Attorney General, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Willie Clarence Alston seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2006) petition and denying his application for a certificate of appealability. The district court's order dismissing Alston's § 2254 petition is not appealable unless a circuit justice or judge issues a certificate of appealability. See 28 U.S.C. § 2253(c)(1) (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) (2006). 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 Alston has not made the requisite showing. Accordingly, we deny Alston's motion for leave to proceed in forma pauperis, deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts

and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED