

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6922

HARVEY P. SHORT,

Plaintiff - Appellant,

v.

ADRIAN HOKE, Warden,

Defendant - Appellee.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. David A. Faber, Senior District Judge. (2:09-cv-01097)

Submitted: November 30, 2010

Decided: December 7, 2010

Before WILKINSON, KEENAN, and WYNN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Harvey P. Short, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Harvey P. Short seeks to appeal the district court's order adopting the magistrate judge's recommendation and denying relief without prejudice on his 28 U.S.C. § 2254 (2006) petition for failure to exhaust state court remedies. The order 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 Short has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. Short's motion to compel the Circuit Court of Kanawha County to adjudicate his state habeas corpus petition is

denied. 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