

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6980

ROBERT L. DAVIS,

Petitioner - Appellant,

v.

ROBERT C. LEWIS, Director of Prisons,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James E. Gates, Magistrate Judge. (5:10-hc-02042-FL)

Submitted: January 18, 2011

Decided: January 26, 2011

Before NIEMEYER, DUNCAN, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Robert L. Davis, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert L. Davis seeks to appeal the district court's order denying his motion for a certificate of appealability in his 28 U.S.C. § 2254 (2006) petition and the magistrate judge's order denying his motion to proceed in forma pauperis on appeal. The orders are 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 Davis has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny Davis' motion 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 the court and argument would not aid the decisional process.

DISMISSED