

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6994

RICKY LEE MILLER,

Petitioner - Appellant,

v.

GENE JOHNSON, Director, Virginia Department of Corrections,

Respondent - Appellee,

and

COMMONWEALTH OF VIRGINIA,

Respondent.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, Magistrate Judge. (3:09-cv-00665-MHL)

Submitted: December 16, 2010

Decided: December 28, 2010

Before GREGORY, DUNCAN, and DAVIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Ricky Lee Miller, Appellant Pro Se. Alice Theresa Armstrong, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ricky Lee Miller seeks to appeal the magistrate judge's* order denying as successive his 28 U.S.C. § 2254 (2006) petition. 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 Miller has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts

* This case was decided by a magistrate judge with the parties' consent pursuant to 28 U.S.C. § 636(c) (2006).

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

DISMISSED