

ON REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6418

TIMOTHY LAMONT BOOKER,

Petitioner - Appellant,

v.

GENE M. JOHNSON, Director, Virginia Department of
Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Norfolk. Mark S. Davis, District
Judge. (2:10-cv-00271-MSD-DEM)

Submitted: February 13, 2012 Decided: February 16, 2012

Before GREGORY, SHEDD, and DAVIS, Circuit Judges.

Rehearing granted; appeal dismissed by unpublished per curiam
opinion.

Timothy Lamont Booker, Appellant Pro Se. Virginia Bidwell
Theisen, Senior Assistant Attorney General, Richmond, Virginia,
for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Timothy Lamont Booker seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2006) petition. In an opinion issued on December 19, 2011, we considered Booker's claims, but concluded that he was not entitled to relief. We denied a certificate of appealability and dismissed the appeal. Booker petitioned for panel rehearing, asserting that our opinion failed to address his appeal of the district court's order denying his motions to alter or amend the judgment filed pursuant to Fed. R. Civ. P. 59(e). Upon consideration of his petition, we grant panel rehearing.

The orders denying Booker's § 2254 petition and denying his Rule 59(e) motions are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (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. Further, we review the denial of a Rule 59 motion for abuse of discretion. Sloas v. CSX Transp. Inc., 616 F.3d 380, 388 (4th Cir. 2010). We have independently reviewed the record and conclude that Booker has not made the requisite showing.

Accordingly, we deny a certificate of appealability as to the district court's denial of both Booker's § 2254 petition and Booker's motions to alter or amend the judgment, 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.

REHEARING GRANTED;
APPEAL DISMISSED