

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6915

RUSSELL DARRYL MOORE,

Petitioner - Appellant,

v.

ROBERT STEVENSON, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. J. Michelle Childs, District Judge. (0:10-cv-01413-JMC)

Submitted: November 3, 2011

Decided: November 18, 2011

Before GREGORY, DUNCAN, and WYNN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Russell Darryl Moore, Appellant Pro Se. Donald John Zelenka, Deputy Assistant Attorney General, William Edgar Salter, III, Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Russell Darryl Moore seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing as untimely his 28 U.S.C. § 2254 (2006) petition. The order is 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. We have independently reviewed the record and conclude that Moore has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We also deny the motions to authorize a transcript at the Government's expense and to appoint counsel. 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