

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 12-7618**

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BERNARD MCFADDEN,

Petitioner - Appellant,

v.

WARDEN OF KERSHAW CORRECTIONAL INSTITUTION,

Respondent - Appellee,

and

THE STATE OF SOUTH CAROLINA; HENRY MCMASTER, South Carolina  
Attorney General,

Respondents.

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Appeal from the United States District Court for the District of  
South Carolina, at Columbia. J. Michelle Childs, District  
Judge. (3:11-cv-00959-JMC)

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Submitted: December 20, 2012

Decided: December 26, 2012

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Before SHEDD, KEENAN, and WYNN, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Bernard McFadden, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Bernard McFadden seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing 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. 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 McFadden has not made the requisite showing. Accordingly, we deny McFadden's motion for a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the

materials before this court and argument would not aid the decisional process.

DISMISSED