

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 12-7793**

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KENNETH H. NEWKIRK,

Petitioner - Appellant,

v.

ANTON BELL; COMMONWEALTH,

Respondents - Appellees.

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Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:12-cv-00179-HEH)

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Submitted: December 13, 2012

Decided: December 19, 2012

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Before MOTZ, WYNN, and FLOYD, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Kenneth H. Newkirk, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenneth H. Newkirk appeals the district court's order dismissing without prejudice his 28 U.S.C. § 2254 (2006) petition for failure to comply with the court's order. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. See 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 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 v. McDaniel, 529 U.S. 473, 484-85 (2000).

We have independently reviewed the record and conclude that Newkirk 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 and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED