

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7805

MANUEL G. RIOS,

Petitioner - Appellant,

v.

ROBERT LEWIS,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. L. Patrick Auld, Magistrate Judge. (1:11-cv-00405-LPA)

Submitted: March 28, 2013

Decided: April 1, 2013

Before NIEMEYER, KING, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Manuel G. Rios, Appellant Pro Se. Clarence Joe DelForge, III, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Manuel G. Rios seeks to appeal the magistrate judge's* order 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 Rios as not made the requisite showing. Accordingly, we deny Rios' motion for a certificate of appealability, deny leave

* Pursuant to 28 U.S.C. § 636(c) (2006), the parties agreed to proceed before a magistrate judge and file any appeal directly in this court.

to proceed in forma pauperis, 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