

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-8017

TIMOTHY FEODOR KEARNEY,

Plaintiff - Appellant,

v.

HAROLD W. CLARKE, Director, Virginia Department of
Corrections,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Norfolk. Douglas E. Miller, Magistrate
Judge. (2:12-cv-00240-DEM)

Submitted: April 30, 2013

Decided: May 2, 2013

Before DUNCAN, WYNN, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Timothy Feodor Kearney, Appellant Pro Se. Kathleen Beatty
Martin, Senior Assistant Attorney General, Richmond, Virginia,
for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Timothy Feodor Kearney seeks to appeal the magistrate judge's order denying relief on his 28 U.S.C. § 2254 (2006) petition.* 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 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 Kearney has not made the requisite showing. Accordingly, we deny leave to proceed in forma pauperis, deny a certificate

* The parties consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c) (2006).

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