

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-8069

CORNELIUS ACRES,

Petitioner - Appellant,

v.

DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent - Appellee,

and

COMMONWEALTH OF VIRGINIA,

Respondent.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (1:12-cv-00883-JCC-IDD)

Submitted: March 26, 2013

Decided: March 28, 2013

Before DUNCAN, FLOYD, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Cornelius Acres, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Cornelius Acres seeks to appeal the district court's order dismissing without prejudice his 28 U.S.C. § 2241 (2006) petition, which the court interpreted as a 28 U.S.C. § 2254 (2006) petition, for failure to comply with a court order. 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 Acres has not made the requisite showing. Accordingly, we deny leave to proceed in forma pauperis, deny Acres' motions for a transcript at the Government's expense and to overturn his

conviction, 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