

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6226

CEDEAL T. HARPER,

Petitioner - Appellant,

v.

DAVID BALLARD, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert C. Chambers, Chief District Judge. (3:12-cv-00653)

Submitted: May 30, 2013

Decided: June 5, 2013

Before SHEDD, DIAZ, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Cedeal T. Harper, Appellant Pro Se. Robert David Goldberg, Assistant Attorney General, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Cedeal T. Harper seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing without prejudice Harper's 28 U.S.C. § 2254 (2006) petition for failure to exhaust. 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 Harper has not made the requisite showing. Accordingly, we deny Harper'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