

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-6632**

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FRANKIE LEE CALHOUN,

Petitioner - Appellant,

v.

TODD PINION,

Respondent - Appellee.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. L. Patrick Auld, Magistrate Judge. (1:11-cv-01119-LPA)

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Submitted: September 26, 2013

Decided: October 1, 2013

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Before MOTZ, GREGORY, and KEENAN, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Frankie Lee Calhoun, Appellant Pro Se. Mary Carla Hollis, Assistant Attorney General, Clarence Joe DelForge, III, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Frankie Lee Calhoun 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 Calhoun has not made the requisite showing. Accordingly, we deny leave to proceed in forma pauperis, deny a certificate

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\* 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