

ON REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6825

GREGORY LYNN ROSS,

Petitioner - Appellant,

v.

SUPERINTENDENT MICHAEL BALL,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. L. Patrick Auld, Magistrate Judge. (1:12-cv-00292-LPA-LPA)

Submitted: December 5, 2013

Decided: January 14, 2014

Before AGEE, KEENAN, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Gregory Lynn Ross, 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Unpublished opinions are not binding precedent in this circuit.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:

Gregory Lynn Ross seeks to appeal the magistrate judge's order dismissing as untimely his 28 U.S.C. § 2254 (2006) petition.¹ 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.

¹ Due to a clerical error, an incorrect opinion issued on September 4, 2013. The panel grants rehearing, withdraws the September 4 opinion, and issues this opinion in its stead. We liberally construe Ross' objections to the magistrate judge's order as a timely notice of appeal. See 28 U.S.C. § 636(c) (2006); Fed. R. App. P. 3(c); In re Spence, 541 F.3d 538, 543 (4th Cir. 2008).

We have independently reviewed the record and conclude that Ross has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. As a result of our grant of panel rehearing and issuance of this revised opinion, Ross' petition for rehearing en banc has been rendered moot.² 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

² We note that the time for filing a petition for panel and/or en banc rehearing from this revised opinion will run anew from the reentry of judgment.