

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7222

THOMAS DAVIS, a/k/a Thomas Edwards,

Petitioner - Appellant,

v.

THE ATTORNEY GENERAL OF THE STATE OF MARYLAND; BOBBY
SHEARIN, Warden,

Respondents - Appellees
and

JOHN ROWLEY,
Respondent.

Appeal from the United States District Court for the District of
Maryland, at Greenbelt. Alexander Williams, Jr., District
Judge. (8:08-cv-03453-AW)

Submitted: November 19, 2013 Decided: November 22, 2013

Before WYNN and FLOYD, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Dismissed by unpublished per curiam opinion.

Thomas Davis, Appellant Pro Se. Edward John Kelley, OFFICE OF
THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Thomas Davis seeks to appeal the district court's order denying his Fed. R. Civ. P. 60(b) motion to vacate the district court's order denying relief on his 28 U.S.C. § 2254 (2006) petition. Davis has unsuccessfully challenged his conviction in a true § 2254 petition. Because Davis's 60(b) motion was a successive and unauthorized § 2254 petition, see In re Vial, 115 F.3d 1192, 1194 (4th Cir. 1997), the district court was obligated to dismiss the motion, see United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003), and the order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006); Reid v. Angelone, 369 F.3d 363, 369 (4th Cir. 2004).

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 Davis has not made the requisite showing. Accordingly, we 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