

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7276

DAVID EUGENE MUNDAY,

Petitioner - Appellant,

v.

WARDEN DAVID BALLARD,

Respondent - Appellee.

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. Frederick P. Stamp, Jr., Senior District Judge. (5:12-cv-00135-FPS-DJJ)

Submitted: November 7, 2013

Decided: December 4, 2013

Before WYNN, FLOYD, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David Eugene Munday, 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Unpublished opinions are not binding precedent in this circuit.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:

David Eugene Munday seeks to appeal the district court's order adopting the magistrate judge's report and recommendation and denying relief on his 28 U.S.C. § 2254 (2006) petition. 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.

We have independently reviewed the record and conclude that Munday 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