

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7317

BILLY LEE LISENBY, JR., a/k/a Malik Al-Shabazz,

Petitioner - Appellant,

v.

CECILIA REYNOLDS, Warden KCI,

Respondent - Appellee.

Appeal from the United States District Court for the District of
South Carolina, at Orangeburg. David C. Norton, District Judge.
(5:12-cv-02666-DCN)

Submitted: December 17, 2013

Decided: December 20, 2013

Before KING, GREGORY, and WYNN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Billy Lee Lisenby, Jr., Appellant Pro Se. Donald John Zelenka,
Senior Assistant Attorney General, James Anthony Mabry,
Assistant Attorney General, Columbia, South Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Billy Lee Lisenby, Jr., seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing Lisenby's 28 U.S.C. § 2254 (2006) petition as untimely filed. 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 Lisenby has not made the requisite showing. Accordingly, we deny Lisenby's motion for a certificate of appealability and dismiss the appeal. We further deny Lisenby's motion for appointment of counsel. 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