

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7544

ROBERT JAMES PETRICK,

Petitioner - Appellant,

v.

FELIX TAYLOR, Administrator, Pasquotank Correctional Inst.,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. James A. Beaty, Jr., District Judge. (1:13-cv-00541-JAB-LPA)

Submitted: January 29, 2014

Decided: February 19, 2014

Before KEENAN and THACKER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Robert James Petrick, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert James Petrick seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2012) 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) (2012). 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) (2012). 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 Petrick has not made the requisite showing. Under our decision in Breard v. Pruett, 134 F.3d 615, 619 (4th Cir. 1998), "a state prisoner must exhaust all available state remedies before he can apply for federal habeas relief." Although

Petrick alleged that he filed a MAR in state court, he provided no evidence of that filing. Accordingly, it is unclear what grounds for relief Petrick raised in that motion, whether any of the claims he asserts in his Section 2254 petition were presented to the North Carolina Court of Appeals, or on what grounds the state court dismissed his motion. We therefore conclude that the district court's ruling that Petrick failed to demonstrate that he exhausted his state court remedies is not "debatable." See Slack, 529 U.S. at 484-85. Accordingly, we deny Petrick's motion for appointment of counsel, 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