

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-7432

FRANKLIN CHARLES SMITH,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Director of Virginia Department of
Corrections,

Respondent - Appellee,

and

KENNETH STOLLE, Virginia Beach Sheriff,

Respondent.

Appeal from the United States District Court for the Eastern
District of Virginia, at Norfolk. Raymond A. Jackson, District
Judge. (2:13-cv-00479-RAJ-LRL)

Submitted: December 21, 2015

Decided: January 5, 2016

Before MOTZ and AGEE, Circuit Judges, and DAVIS, Senior Circuit
Judge.

Dismissed by unpublished per curiam opinion.

Franklin Charles Smith, Appellant Pro Se. Steven Andrew Witmer,
Senior Assistant Attorney General, Richmond, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Franklin Charles Smith 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 Smith has not made the requisite showing. Accordingly, we deny Smith's motion for a certificate of appealability and dismiss the appeal. Smith's motion for appointment of counsel is denied. 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