

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-7714

DWAYNE R. CLARK,

Petitioner - Appellant,

v.

WARDEN BUSCH,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Timothy M. Cain, District Judge. (9:14-cv-02002-TMC)

Submitted: February 25, 2016

Decided: March 2, 2016

Before SHEDD and HARRIS, Circuit Judges, and DAVIS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Dwayne R. Clark, Appellant Pro Se. William Edgar Salter, III, Assistant Attorney General, Donald John Zelenka, Senior Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dwayne R. Clark seeks to appeal the district court's order accepting the magistrate judge's recommendation to grant Respondent's summary judgment motion on Clark's 28 U.S.C. § 2254 (2012) petition and he has filed an application to proceed in forma pauperis. The district court's order is not appealable unless a circuit justice or judge issues a certificate of appealability. See 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 Clark has not made the requisite showing. Accordingly, we deny leave to proceed in forma pauperis, 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