

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-7824

DONALD WAYNE SHIPE,

Petitioner - Appellant,

v.

TRACY S. RAY, Warden of Red Onion State Prison,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Michael F. Urbanski, District Judge. (7:09-cv-00454-SGW-mfu)

Submitted: May 19, 2016

Decided: June 8, 2016

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

Dismissed by unpublished per curiam opinion.

Donald Wayne Shipe, Appellant Pro Se. Donald Eldridge Jeffrey, III, Assistant Attorney General, Richmond, Virginia; Erin Marie Harrigan Kulpa, Assistant United States Attorney, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Donald Wayne Shipe seeks to appeal the district court's order denying Shipe's Fed. R. Civ. P. 60(b) motion for relief from the court's prior judgment denying relief on his 28 U.S.C. § 2254 (2012) petition. This order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (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 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 motion 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 Shipe has not made the requisite showing. Accordingly we deny leave to proceed in forma pauperis, deny a certificate of appealability, and we 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