

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-7963

DONELL D. LEE,

Petitioner - Appellant,

v.

DAVID BALLARD, Warden, Mt. Olive Correctional Complex,

Respondent - Appellee.

Appeal from the United States District Court for the Northern District of West Virginia, at Elkins. John Preston Bailey, District Judge. (2:15-cv-00007-JPB-MJA)

Submitted: April 13, 2016

Decided: May 2, 2016

Before WILKINSON and KEENAN, Circuit Judges, and DAVIS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Donell D. Lee, Appellant Pro Se. Laura Young, OFFICE OF THE ATTORNEY GENERAL, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Donell D. Lee seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2012) petition. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2012). The magistrate judge recommended that the petition be denied and dismissed with prejudice and advised Lee that the failure to file timely and specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Lee filed an objection to the magistrate judge's recommendation, and the district court overruled the objection, adopted the magistrate judge's recommendation, granted Respondent's motion for summary judgment, and denied the § 2254 petition.

The district court's 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.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315-16 (4th Cir. 2005); Wells v. Shriners Hosp., 109 F.3d 198, 201 (4th Cir. 1997); Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985). Lee has waived appellate review of the district court's order by failing to file specific objections after receiving proper notice to the magistrate judge's recommendation concerning all claims other than his claim alleging that the indictment was procured through false testimony.

With respect to that claim, we have independently reviewed the record and conclude that Lee has not made the requisite showing warranting the issuance of a certificate of appealability. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, deny

Lee's motion to appoint counsel, 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