

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-7341

JOHN E. PATE,

Petitioner - Appellant,

v.

ROY COOPER,

Respondent - Appellee.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Frank D. Whitney,
Chief District Judge. (1:16-cv-00086-FDW)

Submitted: December 15, 2016

Decided: December 20, 2016

Before SHEDD, DUNCAN, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

John E. Pate, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John E. Pate seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2012) petition. The 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 Pate has not made the requisite showing. Accordingly, we deny leave to proceed in forma pauperis, deny Pate's motions for a certificate of appealability and 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