

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-7646

DANNY RAY CUBBAGE,

Petitioner - Appellant,

v.

HAROLD CLARKE, Director,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at
Roanoke. Glen E. Conrad, Chief District Judge. (7:15-cv-00680-GEC-RSB)

Submitted: April 25, 2017

Decided: May 3, 2017

Before DIAZ and HARRIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Danny Ray Cubbage, Appellant Pro Se. Donald Eldridge Jeffrey, III, Assistant Attorney
General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Danny Ray Cabbage seeks to appeal the district court's order 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. *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 Cabbage has not made the requisite showing. To the extent he seeks to raise claims on appeal by merely incorporating his § 2254 petition by reference in his informal brief, such incorporation is not sufficient to preserve his claims. *See* 4th Cir. R. 34(b); *McCarver v. Lee*, 221 F.3d 583, 588 n.1 (4th Cir. 2000). And his failure to address the district court's procedural default ruling in his informal brief forecloses his challenge to that ruling. 4th Cir. R. 34(b); *Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014). Accordingly, we 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