

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 17-6472**

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LEROY K. SMALLS, II a/k/a Leroy K. Smalls,

Petitioner - Appellant,

v.

WARDEN OF KIRKLAND CORRECTIONAL INSTITUTION,

Respondent – Appellee,

and

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

Respondent.

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Appeal from the United States District Court for the District of South Carolina, at Beaufort. J. Michelle Childs, District Judge. (9:16-cv-00639-JMC)

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Submitted: August 24, 2017

Decided: August 28, 2017

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Before GREGORY, Chief Judge, and SHEDD and DIAZ, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Leroy K. Smalls, II, Appellant Pro Se. Christina Catoe Bigelow, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Columbia, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Leroy K. Smalls, II, seeks to appeal the district court's order accepting the recommendation of the magistrate judge and 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. 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 Smalls has not made the requisite showing. Accordingly, although we grant Smalls' motion to amend his informal brief, 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*