

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7059

NORMAN KEVIN WILKERSON,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Dir. of VDOC,

Respondent - Appellee,

and

COMMONWEALTH OF VIRGINIA,

Respondent.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, Chief District Judge. (2:15-cv-00396-RBS-RJK)

Submitted: December 13, 2017

Decided: January 19, 2018

Before KEENAN and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Norman Kevin Wilkerson, Appellant Pro Se. Virginia Bidwell Theisen, Senior Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA,

Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Norman Kevin Wilkerson 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. *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 Wilkerson has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, deny the pending motions, and dismiss the appeal.

* Wilkerson has also filed a supplemental notice of appeal from the magistrate judge's earlier order denying his motion for release pending review. We may exercise jurisdiction only over final orders, and certain interlocutory and collateral orders, of the district court. *See* 28 U.S.C. §§ 1291, 1292 (2012). Except when a magistrate judge acts under 28 U.S.C. § 636(c) (2012), we lack jurisdiction over appeals from a magistrate judge's order. *See United States v. Baxter*, 19 F.3d 155, 156-57 (4th Cir. 1994).

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