

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7632

ROBERT DAVIS SMITH, JR., a/k/a Robert Davis Smith, Jr., #0495, a/k/a Robert Davis Smith, Jr., #121630,

Petitioner - Appellant,

v.

WARDEN BUSH,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Mary G. Lewis, District Judge. (8:17-cv-02775-MGL)

Submitted: April 17, 2018

Decided: April 19, 2018

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

Dismissed by unpublished per curiam opinion.

Robert Davis Smith, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Davis Smith, Jr., a state prisoner, seeks to appeal the district court's order accepting in part the recommendation of the magistrate judge and dismissing without prejudice Smith's 28 U.S.C. § 2241 (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 Smith has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.* We dispense with oral argument because the facts and legal contentions are

* Because no amendment could cure the defects in Smith's petition, the district court's order is final and appealable. See *Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 623-24 (4th Cir. 2015).

adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED