

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 18-6051**

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MICHAEL S. GORBHEY,

Petitioner - Appellant,

v.

WARDEN, USP Lee,

Respondent - Appellee.

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Appeal from the United States District Court for the Western District of Virginia, at  
Roanoke. Norman K. Moon, Senior District Judge. (7:17-cv-00218-NKM-RSB)

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Submitted: May 10, 2018

Decided: May 17, 2018

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

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Dismissed by unpublished per curiam opinion.

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Michael S. Gorbey, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael S. Gorbey, a District of Columbia Code offender, seeks to appeal the district court's order dismissing his habeas petition for lack of jurisdiction. 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).<sup>\*</sup> 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 Gorbey has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, deny leave to expand the record, and dismiss the appeal.

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<sup>\*</sup> Because Gorbey was convicted in a District of Columbia court, he is required to obtain a certificate of appealability in order to appeal the denial of his habeas petition. See *Madley v. United States Parole Comm'n*, 278 F.3d 1306, 1310 (D.C. Cir. 2002).

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*