

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-7435

CHARLES ANTHONY BALL,

Petitioner - Appellant,

v.

MIKE SLAGLE,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of North Carolina,
at Asheville. Frank D. Whitney, Chief District Judge. (1:18-cv-00091-FDW)

Submitted: April 4, 2019

Decided: April 10, 2019

Before NIEMEYER and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed in part, dismissed in part by unpublished per curiam opinion.

Charles Anthony Ball, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Charles Anthony Ball appeals the district court's order dismissing his 28 U.S.C. § 2254 (2012) petition as an unauthorized successive habeas petition and dismissing his claim that the state violated Fed. R. App. P. 23(a) and Sup. Ct. R. 36. Ball filed a Fed. R. Civ. P. 60(b) motion which challenged both “the substance of the federal court's resolution of a claim on the merits” and “some defect in the integrity of the federal habeas proceedings,” and was a mixed Rule 60(b)/28 U.S.C. § 2254 petition. *United States v. McRae*, 793 F.3d 392, 397, 400 (4th Cir. 2015) (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005)).

A certificate of appealability is not required for our review of the district court's determination that the majority of Ball's claims presented are successive attacks on Ball's convictions for which he had not obtained prefiling authorization, and that the court was therefore without jurisdiction to consider the claims on the merits. *McRae*, 793 F.3d at 400. We have reviewed the record and find no reversible error. Accordingly, we affirm the dismissal of these claims.

The district court's denial of relief on Ball's claim that the state violated Fed. R. App. P. 23(a) and Sup. Ct. R. 36 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 Ball has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal as to this claim.

We therefore affirm in part and deny a certificate of appealability and dismiss in part. We deny Ball's motion for the appointment of counsel. 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.

*AFFIRMED IN PART,
DISMISSED IN PART*