

UNPUBLISHED

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

No. 19-6195

THOMAS SHRADER,

Petitioner - Appellant,

v.

STATE OF WEST VIRGINIA; AUDREY GILL, Warden - FCI Mendota, CA,

Respondents - Appellees.

Appeal from the United States District Court for the Southern District of West Virginia,
at Bluefield. David A. Faber, Senior District Judge. (1:14-cv-25344)

Submitted: April 18, 2019

Decided: April 23, 2019

Before WILKINSON, MOTZ, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Thomas Creighton Shrader, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Thomas Shrader seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on Shrader's 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 Shrader 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

^{*} Shrader argues that his petition should have been construed as arising under 28 U.S.C. § 2241 (2012) and, therefore, he is not required to obtain a certificate of appealability. We disagree. Because Shrader directly challenged the validity of his prior state convictions, his petition is properly construed as a § 2254 petition, for which a certificate of appealability is required.

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

DISMISSED