

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7215

DANIEL R. MCCLAIN, a/k/a Mr. McClain,

Petitioner - Appellant,

v.

WARDEN, Turbeville Correctional Institution,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Margaret B. Seymour, Senior District Judge. (0:18-cv-03081-MBS)

Submitted: December 19, 2019

Decided: December 23, 2019

Before NIEMEYER, AGEE, and QUATTLEBAUM, Circuit Judges.

Dismissed in part and affirmed in part by unpublished per curiam opinion.

Daniel R. McClain, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Daniel R. McClain seeks to appeal the district court's order accepting the recommendation of the magistrate judge, dismissing as untimely his 28 U.S.C. § 2254 (2012) petition, and denying his motion to recuse.* An order denying a § 2254 petition 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 McClain has not made the requisite showing. Accordingly, we deny McClain's motion for a certificate of appealability and dismiss the appeal in part. To the extent that McClain challenges the denial of his motion to recuse, we find no abuse of discretion and affirm for the reasons stated by the district court. *McClain v. Warden*, No. 0:18-cv-03081-MBS (D.S.C. filed Aug. 5, 2019; entered Aug. 6, 2019). We deny McClain's motion for default judgment.

* The district court's order denied additional motions that are not at issue on appeal.

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 IN PART,
AFFIRMED IN PART*