

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7648

SAMMY K. COWAN,

Petitioner - Appellant,

v.

MICHAEL STEPHAN, Warden of Broad River Correctional Institution,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Terry L. Wooten, Senior District Judge. (6:18-cv-02827-TLW)

Submitted: December 1, 2020

Decided: December 17, 2020

Before WILKINSON, KING, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Sammy K. Cowan, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sammy K. Cowan seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on Cowan's 28 U.S.C. § 2254 petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). 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). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). 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. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).*

We have independently reviewed the record and conclude that Cowan has not made the requisite showing. Accordingly, we deny Cowan's motion to appoint counsel, deny a certificate of appealability, and dismiss the appeal. We dispense with oral argument

* Cowan also raised a claim related to the state solicitor allegedly failing to disclose pending charges against a state's witness. This claim is not properly before this court because Cowan did not present it to the district court. *See In re Under Seal*, 749 F.3d 276, 285 (4th Cir. 2014) ("Our settled rule is simple: absent exceptional circumstances, we do not consider issues raised for the first time on appeal." (alterations and internal quotation marks omitted)).

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

DISMISSED