

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 20-6824**

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CHARLTON A. HORTON, JR.,

Petitioner - Appellant,

v.

RALPH TERRY, Warden,

Respondent - Appellee.

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Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. Gina M. Groh, Chief District Judge. (3:18-cv-00103-GMG)

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Submitted: September 22, 2020

Decided: September 25, 2020

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Before NIEMEYER, KEENAN, and FLOYD, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Charlton A. Horton, Jr., Petitioner Pro Se. Lindsay Sara See, OFFICE OF THE ATTORNEY GENERAL, Charleston, West Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Charlton A. Horton, Jr., seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on Horton'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 Horton has not made the requisite showing. Accordingly, we deny his motion for a certificate of appealability and dismiss the appeal. As the district court granted Horton's motion for leave to file out of time, we deny as moot the motion for leave to file out of time that is currently pending in this court. 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*