

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6879

(CHIEF) COL. MICHAEL S. OWLFEATHER-GORBHEY,

Petitioner - Appellant,

v.

WARDEN, FCI Beckley,

Respondent - Appellee.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. Frank W. Volk, District Judge. (5:22-cv-00138)

Submitted: September 5, 2023

Decided: September 11, 2023

Before KING, AGEE, and RICHARDSON, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Michael S. Owlfeather-Gorbey, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

(Chief) Col. Michael S. Owlfeather-Gorbey, a District of Columbia offender, seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing his 28 U.S.C. § 2241 petition without prejudice. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1); *Madley v. U.S. Parole Comm'n*, 278 F.3d 1306, 1310 (D.C. Cir. 2002); *cf.* *Jones v. Hendrix*, 143 S. Ct. 1857, 1864, 1868 (2023); *In re Wright*, 826 F.3d 774, 783 (4th Cir. 2016). 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*, 580 U.S. 100, 115-17 (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 Owlfeather-Gorbey has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny the pending motion, and dismiss the 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