

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7014

DAVID EDWARD OSBORN,

Petitioner - Appellant,

versus

STEPHEN DOTSON, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, District Judge. (CA-01-611-3)

Submitted: November 19, 2002

Decided: December 2, 2002

Before MOTZ and TRAXLER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

David Edward Osborn, Appellant Pro Se. Leah Ann Darron, Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

David E. Osborn, a state prisoner, seeks to appeal the district court's order denying relief on his petition filed under 28 U.S.C. § 2254 (2000). An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2254 petition solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 122 S. Ct. 318 (2001). We have reviewed the record and conclude for the reasons stated by the district court that Osborne has not made the requisite showing. See Osborn v. Dotson, No. CA-01-611-3 (E.D. Va. May 29, 2002). Accordingly, we deny a certificate of appealability and dismiss the appeal. We also deny Osborn's motion requesting the court to move forward with his case and to refuse further filings by Appellees. The court's ruling and Appellee's lack of filings renders this motion moot. We dispense with oral argument because the facts and

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

DISMISSED