

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7242

MAURICE MCCAIN,

Petitioner - Appellant,

versus

CHIEF WARDEN GARRITY, Greensville Federal
Corrections Facility,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Richmond. Robert E. Payne, District Judge.
(CA-02-435)

Submitted: December 16, 2002

Decided: December 20, 2002

Before LUTTIG, MICHAEL, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Joan Augusta Harvill, Arlington, Virginia, for Appellant.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Maurice McCain, a District of Columbia prisoner, seeks to appeal the district court's order denying relief on his petition filed under 28 U.S.C. § 2241 (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 § 2241 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 McCain has not made the requisite showing. See McCain v. Garrity, No. CA-02-435 (E.D. Va. July 16, 2002). Accordingly, we deny a certificate of appealability and dismiss the appeal. In addition, we grant McCain's counsel's motion

* Because McCain was convicted in a District of Columbia court, he is required to obtain a certificate of appealability in order to proceed with this § 2241 petition. See Modley v. United States Parole Comm'n, 278 F.3d 1306 (D.C. Cir.), cert. denied, 123 S. Ct. 515 (2002).

to withdraw. 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