

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 02-7268**

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MICHAEL B. LESANE,

Petitioner - Appellant,

versus

COLIE RUSHTON, Warden of McCormick  
Correctional Institution; CHARLES CONDON,  
Attorney General of the State of South  
Carolina,

Respondents - Appellees.

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Appeal from the United States District Court for the District of  
South Carolina, at Anderson. Dennis W. Shedd, District Judge.  
(CA-02-146)

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Submitted: December 9, 2002                      Decided: December 24, 2002

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Before NIEMEYER, LUTTIG, and TRAXLER, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Michael B. Lesane, Appellant Pro Se. Derrick K. McFarland, OFFICE  
OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South  
Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Michael B. Lesane seeks to appeal the district court's order adopting the magistrate judge's report and dismissing for failure to exhaust state remedies 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 Lesane has not made the requisite showing. See Lesane v. Rushton, No. CA-02-146 (D.S.C. Aug. 5, 2002). Accordingly, we deny a certificate of appealability and dismiss the appeal. 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