

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7437

MARK ANTHONY CUNNINGHAM,

Petitioner - Appellant,

versus

J. MICHAEL STOUFFER, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Frederic N. Smalkin, Chief District Judge. (CA-02-2219-S)

Submitted: December 19, 2002

Decided: December 31, 2002

Before WILKINS and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Mark Anthony Cunningham, Appellant Pro Se. John Joseph Curran, Jr., Attorney General, Mary Ann Rapp Ince, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Mark Anthony Cunningham, 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 to this court from the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court 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 Cunningham has not made the requisite showing. See Cunningham v. Stouffer, No. CA-02-2219-S (D. Md. Sept. 12, 2002). Accordingly, we deny a certificate of appealability and dismiss the appeal. We also deny Cunningham's motion for appointment of counsel and 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