

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7472

BRIAN HOWARD, Lieber Correctional Institution,

Petitioner - Appellant,

versus

STATE OF SOUTH CAROLINA; CHARLES MOLONY
CONDON, Attorney General of the State of South
Carolina,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Greenville. Cameron M. Currie, District Judge.
(CA-02-656-6)

Submitted: January 28, 2003

Decided: February 14, 2003

Before WILLIAMS, MICHAEL, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Brian Howard, Appellant Pro Se. Samuel Creighton Waters, OFFICE OF
THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina,
for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Brian Howard, a state prisoner, seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing his 28 U.S.C. § 2254 (2000) petition. 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, 534 U.S. 941 (2001).

We have reviewed the record and conclude for the reasons stated by the district court that Howard has not made the requisite showing. See Howard v. South Carolina, No. CA-02-656-6 (D.S.C. filed Sept. 10, 2002 and entered Sept. 11, 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