

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7564

DENNIS RAY GRAVES,

Petitioner - Appellant,

versus

EDDIE PEARSON, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (CA-02-1048)

Submitted: February 20, 2003

Decided: February 26, 2003

Before LUTTIG, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Dennis Ray Graves, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Dennis Ray Graves seeks to appeal the district court's order dismissing without prejudice, and as second or successive, 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, 534 U.S. 941 (2001).

We have reviewed the record and conclude for the reasons stated by the district court that Graves has not made the requisite showing. See Graves v. Pearson, No. CA-02-1048 (E.D. Va. filed Aug. 28, 2002; entered Aug. 29, 2002). Accordingly, we deny a certificate of appealability and dismiss the appeal. We further deny Graves' motion for the appointment of counsel. 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