

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7822

JAMES A. EMERY,

Petitioner - Appellant,

versus

GEORGE M. WARREN, JR., for Commonwealth;
RONALD J. ANGELONE,

Respondents - Appellees.

Appeal from the United States District Court for the Western
District of Virginia, at Roanoke. Samuel G. Wilson, Chief District
Judge. (CA-01-570-7)

Submitted: March 6, 2003

Decided: March 14, 2003

Before WILKINSON, MICHAEL, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

James A. Emery, Appellant Pro Se. Robert H. Anderson, III, OFFICE
OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for
Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

James A. Emery seeks to appeal the district court's order dismissing as procedurally defaulted 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 independently reviewed the record and conclude that Emery has not made the requisite showing. See Miller-El v. Cockrell, ___ U.S. ___, 2003 WL 431659, at *10 (U.S. Feb. 25, 2003) (No. 01-7662). 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