

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

TIMOTHY LAYTON,
Petitioner-Appellant,

v.

HOWARD PAINTER, Warden, Mount
Olive Correctional Complex,
Respondent-Appellee.

No. 02-7947

Appeal from the United States District Court
for the Northern District of West Virginia, at Martinsburg.
W. Craig Broadwater, District Judge.
(CA-00-28-3)

Submitted: April 24, 2003

Decided: November 24, 2003

Before WILLIAMS and TRAXLER, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

COUNSEL

Timothy Layton, Appellant Pro Se. Silas Bent Taylor, Deputy Attorney General, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Timothy Layton seeks to appeal the district court's order and order on reconsideration denying relief on his 28 U.S.C. § 2254 (2000) petition. Layton cannot appeal these orders unless a circuit judge or justice issues a certificate of appealability, and a certificate of appealability will not issue absent a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A habeas petitioner meets this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. *See Miller-El v. Cockrell*, ___ U.S. ___, 123 S. Ct. 1029, 1039 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir.), *cert. denied*, 535 U.S. 941 (2001). As to two of the issues Layton presents — whether the trial court adequately advised Layton regarding the dangers of self-representation, and whether the trial court erred in accepting Layton's attorney's request that he be allowed not to directly examine Layton, because of his belief that Layton planned to perjure himself on the stand — Judge Williams and Judge Traxler conclude that Layton has made the required showing. Accordingly, we grant a certificate of appealability as to these issues. Having independently reviewed the record, however, we conclude that the district court did not err in denying habeas relief as to these issues, and accordingly affirm its judgment. As to the remaining issues, 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