

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6771

JAMES FRANKLIN PIPES,

Petitioner - Appellant,

v.

DAVID BALLARD, Warden,

Respondent - Appellee,

and

THOMAS L. MCBRIDE, Warden,

Respondent.

Appeal from the United States District Court for the Northern
District of West Virginia, at Elkins. Robert E. Maxwell, Senior
District Judge. (2:05-cv-00058-REM-JSK)

Submitted: August 30, 2010

Decided: September 16, 2010

Before WILKINSON, NIEMEYER, and DAVIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

James Franklin Pipes, Appellant Pro Se. R. Christopher Smith,
Dawn Ellen Warfield, Deputy Attorney General, Charleston, West
Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Franklin Pipes seeks to appeal the district court's orders adopting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2006) petition. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006). 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). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85. We have independently reviewed the record and conclude that Pipes has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny Pipes's motion for appointment of counsel, 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