

Filed: August 24, 2011

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 11-6214  
(5:10-hc-02206-D)

---

CALVIN B. NELSON,

Plaintiff - Appellant,

v.

JONATHAN MINER,

Respondent - Appellee.

---

O R D E R

---

The Court amends its opinion filed August 2, 2011, as follows:

On the cover sheet caption, the name of "JONATHAN MINER" is substituted for the name of "WILLIAM SCISM" as Appellee.

For the Court - By Direction

/s/ Patricia S. Connor  
Clerk

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 11-6214**

---

CALVIN B. NELSON,

Plaintiff - Appellant,

v.

JONATHAN MINER,

Respondent - Appellee.

---

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:10-hc-02206-D)

---

Submitted: July 28, 2011

Decided: August 2, 2011

---

Before SHEDD, AGEE, and DIAZ, Circuit Judges.

---

Dismissed by unpublished per curiam opinion.

---

Calvin B. Nelson, Appellant Pro Se.

---

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Calvin B. Nelson, a District of Columbia offender, seeks to appeal the district court's order denying relief without prejudice on his 28 U.S.C.A. § 2241 (West 2006 & Supp. 2011) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (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) (2006). 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 Nelson has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, 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