

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 12-6089**

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CLYDE OWEN DAY, JR.,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Director of the Virginia Department of  
Corrections,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern  
District of Virginia, at Norfolk. Rebecca Beach Smith, Chief  
District Judge. (2:11-cv-00079-RBS-DEM)

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Submitted: February 23, 2012

Decided: February 28, 2012

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Before MOTZ, DAVIS, and DIAZ, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Clyde Owen Day, Jr., Appellant Pro Se. Kathleen Beatty Martin,  
Senior Assistant Attorney General, Richmond, Virginia, for  
Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Clyde Owen Day, Jr., seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying his Fed. R. Civ. P. 60(b) motion for reconsideration of the district court's order denying relief on his 28 U.S.C. § 2254 (2006) 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); Reid v. Angelone, 369 F.3d 363, 369 (4th Cir. 2004). 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 Day has not made the requisite showing. 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