

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-6425

LARRY MCFARLAND,

Petitioner - Appellant,

v.

KIMBERLY RUNION, Mrs., Facility Director,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:11-cv-00206-CMH-TRJ)

Submitted: July 11, 2012

Decided: July 31, 2012

Before GREGORY, DAVIS, and WYNN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Larry McFarland, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry McFarland seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2006) petition for failure to exhaust his state court remedies and has filed a motion to proceed in forma pauperis. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. See 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 McFarland has not made the requisite showing. Accordingly, we deny McFarland's motion to proceed in forma pauperis, 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