

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-6530

DERRICK Q. MCFADDEN,

Petitioner - Appellant,

v.

STATE OF NORTH CAROLINA; MIKE BALL, Superintendent; DIRECTOR
ROBERT C. LEWIS, NCDOC,

Respondents - Appellees.

Appeal from the United States District Court for the Eastern
District of North Carolina, at Raleigh. Louise W. Flanagan,
District Judge. (5:11-hc-02218-FL)

Submitted: May 24, 2012

Decided: May 31, 2012

Before MOTZ and DAVIS, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Dismissed by unpublished per curiam opinion.

Derrick Q. McFadden, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick Q. McFadden seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2006) petition without prejudice because he failed to comply with the court's order to pay the required filing fee. 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 McFadden 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