

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6301

JEFFERY ALLEN NALLY, JR.,

Petitioner - Appellant,

v.

WARDEN EVELYN SEIFERT,

Respondent - Appellee,

and

JAMES T. CAREY; LARRY ROBERTS; JAMES DAVIS, JR.; JUDGE FRED
FOX, II; SCOTT SWAN,

Respondents.

Appeal from the United States District Court for the Northern
District of West Virginia, at Wheeling. Frederick P. Stamp,
Jr., Senior District Judge. (5:12-cv-00085-FPS-JES)

Submitted: April 25, 2013

Decided: April 30, 2013

Before AGEE and WYNN, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Dismissed by unpublished per curiam opinion.

Jeffery Allen Nally, Jr., Appellant Pro Se. Robert David
Goldberg, Assistant Attorney General, Silas B. Taylor, OFFICE OF
THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West

Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jeffery Allen Nally, Jr., seeks to appeal the district court's order accepting the recommendation of the magistrate judge and 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). 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 Nally 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 this court and argument would not aid the decisional process.

DISMISSED