

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6761

JOSEPH HUNEYCUTT,

Petitioner - Appellant,

v.

RICKY LEWIS NEELEY, Superintendent,

Respondent - Appellee.

Appeal from the United States District Court for the Middle
District of North Carolina, at Greensboro. L. Patrick Auld,
District Judge. (1:12-cv-01052-LPA)

Submitted: August 29, 2013

Decided: September 4, 2013

Before DUNCAN, AGEE, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Joseph Huneycutt, Appellant Pro Se. Clarence Joe DelForege, III,
NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina,
for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Joseph Huneycutt seeks to appeal the magistrate judge's order dismissing as untimely 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 Huneycutt has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in

* The parties consented to proceed before a magistrate judge.

forma pauperis, and dismiss the appeal. We grant Honeycutt's motion to amend. 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