

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6823

BENJAMIN WILLIAM FAWLEY,

Petitioner - Appellant,

v.

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

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Norfolk. Mark S. Davis, District
Judge. (2:12-cv-00400-MSD-LRL)

Submitted: September 6, 2013

Decided: October 4, 2013

Before DAVIS, WYNN, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Benjamin William Fawley, Appellant Pro Se. David Michael
Uberman, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond,
Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Benjamin William Fawley seeks to appeal the district court's order adopting the recommendation of the magistrate judge and dismissing as successive 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). 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 Fawley has not made the requisite showing. Accordingly, we deny a certificate of appealability and deny Fawley's motion for default judgment. We deny Fawley's application for leave to proceed in forma pauperis as moot, as he has already paid the

filing fee, 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