

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7009

BERNARD MCFADDEN,

Petitioner - Appellant,

v.

STATE OF SOUTH CAROLINA; HENRY MCMASTER, South Carolina
Attorney General,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Columbia. J. Michelle Childs, District
Judge. (3:11-cv-02394-JMC)

Submitted: October 23, 2013

Decided: October 25, 2013

Before SHEDD, KEENAN, and WYNN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Bernard McFadden, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Bernard McFadden seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing without prejudice his 28 U.S.C. § 2254 (2006) petition and the court's order denying his Fed. R. Civ. P. 59(e) motion. 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 McFadden 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