

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7916

CALVIN FONVILLE,

Petitioner - Appellant,

v.

WARDEN WILSON, FCC Petersburg Low,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, Chief District Judge. (2:13-cv-00504-RBS-TEM)

Submitted: February 20, 2014

Decided: February 26, 2014

Before DUNCAN, DIAZ, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Calvin Fonville, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Calvin Fonville seeks to appeal the district court's order treating his 28 U.S.C. § 2241 (2012) motion as a successive 28 U.S.C. § 2255 (2012) motion and dismissing it on that basis. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). 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) (2012). 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 motion 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 Fonville 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 this court and argument would not aid the decisional process.

DISMISSED