

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-7506

BREYON D. MIDDLEBROOKS,

Petitioner - Appellant,

v.

DUANE TERRELL, Administrator Marion Correctional
Institution,

Respondent - Appellee.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Frank D. Whitney,
Chief District Judge. (1:13-cv-00223-FDW)

Submitted: April 23, 2015

Decided: April 27, 2015

Before SHEDD, DUNCAN, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Milton Gordon Widenhouse, Jr., RUDOLF, WIDENHOUSE & FIALKO,
Chapel Hill, North Carolina, for Appellant. Clarence Joe
DelForge, III, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh,
North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Breyon D. Middlebrooks seeks to appeal the district court's order dismissing as untimely his 28 U.S.C. § 2254 (2012) 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) (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 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 Middlebrooks 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