

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6486

HOWARD Z. GARNETT,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Director, Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Glen E. Conrad, Chief District Judge. (7:14-cv-00452-GEC-RSB)

Submitted: October 4, 2016

Decided: November 1, 2016

Before GREGORY, Chief Judge, DUNCAN, Circuit Judge, and DAVIS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Howard Z. Garnett, Appellant Pro Se. Alice Theresa Armstrong, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Howard Z. Garnett seeks to appeal the district court's order denying his Fed. R. Civ. P. 60(b)(3) motion for relief from the district court's prior order denying relief on Garnett's 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); Reid v. Angelone, 369 F.3d 363, 369 (4th Cir. 2004), abrogated in part by United States v. McRae, 793 F.3d 392, 399-400 & n.7 (4th Cir. 2015). 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 Garnett 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

* Because Garnett does not challenge the basis for the district court's disposition on his Rule 60(b) motion in his informal brief, Garnett has forfeited appellate review of the court's order. See 4th Cir. R. 34(b).