

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7439

RONALD J. PRESCO,

Plaintiff - Appellant,

versus

ROBERT KUPEC, Warden, Eastern Correctional
Institution,

Defendant - Appellee.

Appeal from the United States District Court for the District of
Maryland, at Greenbelt. Deborah K. Chasanow, District Judge. (CA-
02-1544-DKC)

Submitted: November 21, 2002

Decided: December 4, 2002

Before NIEMEYER, WILLIAMS, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Ronald J. Presco, Appellant Pro Se. John Joseph Curran, Jr.,
Attorney General, Sharon Stanley Street, Assistant Attorney
General, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Ronald J. Presco, a Maryland prisoner, seeks to appeal the district court's order construing his 42 U.S.C. § 1983 (2000) action as a petition filed under 28 U.S.C. § 2241 (2000), and dismissing it without prejudice for failure to exhaust state remedies. An appeal may not be taken to this court from the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2241 petition solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F. 3d 676, 684 (4th Cir. 2001) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

We have reviewed the record and conclude for the reasons stated by the district court that Presco has not made the requisite showing. See Presco v. Kupec, No. CA-02-1544-DKC (D. Md. Sept. 17, 2002). 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 the court and argument would not aid the decisional process.

DISMISSED