

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7863

JENS SOERING,

Petitioner - Appellant,

versus

WARDEN OF BRUNSWICK CORRECTIONAL CENTER,

Respondent - Appellee.

Appeal from the United States District Court for the Western
District of Virginia, at Roanoke. Jackson L. Kiser, Senior
District Judge. (CA-03-559-7)

Submitted: July 28, 2004

Decided: August 24, 2004

Before MOTZ, GREGORY, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jens Soering, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jens Soering seeks to appeal the district court's order dismissing without prejudice his petition under 28 U.S.C. § 2254 (2000), as an unauthorized successive petition.* An appeal may not be taken from the final order in a habeas corpus proceeding 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 § 2254 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 independently reviewed the record and conclude that Soering has not made the requisite showing. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003).

Finally, in accordance with United States v. Winestock, 340 F.3d 200, 208 (4th Cir.), cert. denied, 124 S. Ct. 496 (2003), we construe Soering's notice of appeal and informal brief as a

*By order filed March 12, 2004, this appeal was placed in abeyance for Jones v. Braxton, No. 03-6891. In view of our recent decision in Reid v. Angelone, 369 F.3d 363 (4th Cir. 2004), we no longer find it necessary to hold this case in abeyance for Jones.

motion for authorization under 28 U.S.C. § 2244 (2000) to file a successive habeas corpus petition. To obtain permission to bring a second or successive § 2254 petition, a movant must show that his claim: (1) "relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable" or (2) relies on newly discovered facts that tend to establish the movant's innocence. 28 U.S.C. § 2244. We conclude that Soering has not satisfied either standard.

Accordingly, we deny Soering's implicit application for leave to file a successive § 2254 petition, 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