

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-6725

H. DEWAIN HERRING,

Petitioner - Appellant,

v.

ROBERT M. STEVENSON, III, Warden Broad River Correctional
Institute,

Respondent - Appellee,

and

WILLIAM R. BYARS, JR., Director SC Department of
Corrections,

Respondent.

Appeal from the United States District Court for the District of
South Carolina, at Rock Hill. Margaret B. Seymour, Chief
District Judge. (0:11-cv-00160-MBS)

Submitted: August 16, 2012

Decided: August 21, 2012

Before KING and THACKER, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Dismissed by unpublished per curiam opinion.

James Mixon Griffin, LEWIS, BABCOCK & GRIFFIN, LLP, Columbia,
South Carolina, for Appellant. Donald John Zelenka, Deputy
Assistant Attorney General, Columbia, South Carolina, for

Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

H. Dewain Herring seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2006) 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) (2006). 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) (2006). 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 Herring 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 the court and argument would not aid the decisional process.

DISMISSED