

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6792

JOSHUA ANDREW STEPP,

Petitioner - Appellant,

v.

EDDIE M. BUFFALOE, JR.,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Raleigh. James C. Dever III, District Judge. (5:22-hc-02201-D)

Submitted: July 1, 2025

Decided: August 18, 2025

Before THACKER and BERNER, Circuit Judges, and FLOYD, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Lauren Elizabeth Miller, NORTH CAROLINA PRISONER LEGAL SERVICES, INC.,
Raleigh, North Carolina, for Appellant. Sherri Horner Lawrence, NORTH CAROLINA
DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Joshua Andrew Stepp seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). 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). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 580 U.S. 100, 115-17 (2017). 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. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Stepp has not made the requisite showing. His counsel's failure to lay a sufficient foundation to support a jury instruction on a novel legal theory was not strategic. Nevertheless, in light of the overwhelming evidence of Stepp's guilt, we reject his contention that he suffered prejudice. There is not a reasonable probability that, but for counsel's error, the verdict would have been different. 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