

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6672

JAMES B. WEERSING,

Petitioner - Appellant,

v.

LEROY CARTLEDGE, Warden McCormick Correctional Institution,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Anderson. J. Michelle Childs, District Judge. (8:09-cv-00088-JMC)

Submitted: April 19, 2012

Decided: April 24, 2012

Before NIEMEYER, SHEDD, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

James B. Weersing, Appellant Pro Se. Donald John Zelenka, Deputy Assistant Attorney General, Alphonso Simon, Jr., Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James B. Weersing seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing as untimely 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 Weersing has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We deny Weersing's motion for appointment of counsel. 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