

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-6779

KENNETH NEWKIRK,

Petitioner - Appellant,

v.

DIRECTOR, DEPT. OF CORRECTIONS,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:17-cv-00229-HEH-RCY)

Submitted: October 26, 2017

Decided: November 28, 2017

Before GREGORY, Chief Judge, and MOTZ and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Kenneth Newkirk, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

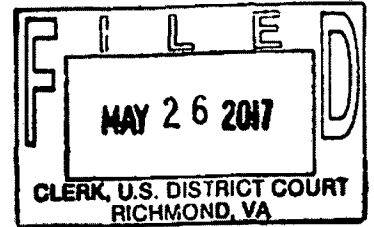
PER CURIAM:

Kenneth Newkirk seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2012) petition without prejudice for failure to comply with a prior order. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2012). 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) (2012). 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 Newkirk has not made the requisite showing. Accordingly, we deny Newkirk's motion to reconsider the order deferring action on his in forma pauperis application, deny leave to proceed in forma pauperis, 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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



KENNETH NEWKIRK,

Petitioner,

v.

DIRECTOR, DEPT. OF
CORRECTIONS,

Respondent.

Civil Action No. 3:17CV229-HEH

ORDER

(Dismissing Without Prejudice 28 U.S.C. § 2254 Petition)

In accordance with the accompanying Memorandum Opinion, it is hereby

ORDERED that:

1. The action is DISMISSED WITHOUT PREJUDICE; and,
2. A certificate of appealability is DENIED;

Should Newkirk desire to appeal, a written notice of appeal must be filed with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a notice of appeal within that period may result in the loss of the ability to appeal.

The Clerk is DIRECTED to send a copy of the Memorandum Opinion and Order to Newkirk.

It is so ORDERED.

Date: May 26, 2017
Richmond, Virginia

HEH /s/
HENRY E. HUDSON
UNITED STATES DISTRICT JUDGE