

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7270

THOMAS LEE GRATE, III,

Petitioner - Appellant,

versus

WARDEN, Red Onion State Prison,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, District Judge. (CA-02-248-3)

Submitted: November 7, 2002

Decided: November 14, 2002

Before WILKINS and LUTTIG, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Thomas Lee Grate, III, Appellant Pro Se. Michael Thomas Judge, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Thomas Lee Grate, III, seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2000) petition. To be entitled to a certificate of appealability, Grate must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). When a district court dismisses solely on procedural grounds, the petitioner "must 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 (2000)). Upon examination of Grate's petition, we cannot conclude that reasonable jurists would find it debatable whether the district court correctly concluded the petition was untimely. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, 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