

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 02-7379**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID DANIEL DEMOSS,

Defendant - Appellant.

---

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Joseph Robert Goodwin, District Judge. (CR-99-187, CA-02-294-2)

---

Submitted: November 21, 2002

Decided: March 21, 2003

---

Before NIEMEYER, WILLIAMS, and TRAXLER, Circuit Judges.

---

Dismissed by unpublished per curiam opinion.

---

David Daniel DeMoss, Appellant Pro Se. Kasey Warner, United States Attorney, Michael Lee Keller, Michael O. Callaghan, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

David Daniel DeMoss appeals the district court's order accepting the magistrate judge's report and recommendation and dismissing his motion filed under 28 U.S.C. § 2255 (2000) as untimely under the Antiterrorism and Effective Death Penalty Act (AEDPA). An appeal may not be taken from the final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2255 motion solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can 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.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 122 S. Ct. 318 (2001). We have reviewed the record and conclude for the reasons stated by the district court that DeMoss has not made the requisite showing. See DeMoss v. United States, Nos. CR-99-187; CA-02-294-2 (S.D.W. Va. July 19, 2002). 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