UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6587

LLOYD VAN SHAWN DOWNING,

Petitioner - Appellant,

v.

GENE M. JOHNSON, Director, Virginia Department of Corrections,

Respondent – Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Jerome B. Friedman, Senior District Judge. (2:10-cv-00413-JBF-DEM)

Submitted: September 29, 2011 Decided: October 6, 2011

Before KING, GREGORY, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Lloyd Van Shawn Downing, Appellant Pro Se. Karen Misbach, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lloyd Van Shawn Downing 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.

The district court found that Downing failed to timely file his 28 U.S.C. § 2254 petition within the applicable limitation period provided by 28 U.S.C. § 2244(d)(1) (2006). Downing fails to challenge this finding on appeal. Moreover, we find no reversible error in the district court's timeliness

calculation. 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