

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7962

JAMES EDWARD SPELLER, II,

Petitioner - Appellant,

v.

THOMAS ASBELL,

Respondent - Appellee,

and

STATE OF NORTH CAROLINA,

Respondent.

Appeal from the United States District Court for the Eastern
District of North Carolina, at Raleigh. Louise W. Flanagan,
District Judge. (5:13-hc-02058-FL)

Submitted: April 28, 2014

Decided: May 2, 2014

Before WILKINSON, AGEE, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

James Edward Speller, II, Appellant Pro Se. Mary Carla Hollis,
Assistant Attorney General, Raleigh, North Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Edward Speller, II, seeks to appeal the district court's order dismissing as untimely his 28 U.S.C. § 2254 (2012) 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) (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 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 v. McDaniel, 529 U.S. 473, 484-85 (2000).

We have independently reviewed the record and conclude that Speller has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal as it pertains to the district court's order dismissing Speller's § 2254 petition as untimely.

Speller also seeks to appeal the district court's order denying his motion for a certificate of appealability. In light of our decision not to grant a certificate of appealability on the district court's order dismissing Speller's

§ 2254 petition, we dismiss as moot Speller's appeal as to this order.

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