

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6104

GREGORY TYRONE GARY-BEY,

Petitioner - Appellant,

v.

MARK R. HERRING, Attorney General of Virginia; KEITH W.
DAVIS, Warden, Sussex I State Prison,

Respondents - Appellees.

Appeal from the United States District Court for the Eastern
District of Virginia, at Norfolk. Arenda L. Wright Allen,
District Judge. (2:15-cv-00160-AWA-LRL)

Submitted: May 18, 2016

Decided: May 23, 2016

Before SHEDD, DIAZ, and HARRIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Gregory Tyrone Gary-Bey, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gregory Tyrone Gary-Bey seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2012) petition. He also seeks to appeal the district court's order denying his motion for evidentiary hearing and appointment of counsel. For the reasons that follow, we dismiss the appeal.

Parties are accorded 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214 (2007).

The district court's order dismissing Gary-Bey's § 2254 petition was entered on the docket on December 1, 2015. The notice of appeal was filed on January 13, 2016.* Because Gary-Bey failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss his appeal of that order.

*For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).

Gary-Bey's appeal is timely as to the district court's order denying his motion for evidentiary hearing and appointment of counsel. However, that 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 Gary-Bey has not made the requisite showing. 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 this court and argument would not aid the decisional process.

DISMISSED