

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6549

SHAHEEN CABBAGESTALK, a/k/a James Cabbagestalk,

Petitioner - Appellant,

v.

SCDC; WARDEN OF BROAD RIVER CORRECTIONAL INSTITUTION,

Respondents - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Richard Mark Gergel, District Judge. (5:20-cv-00859-RMG)

Submitted: December 17, 2020

Decided: January 13, 2021

Before THACKER and RUSHING, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Shaheen Cabbagestalk, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Shaheen Cabbagestalk seeks to appeal the district court's order adopting the magistrate judge's recommendation and dismissing without prejudice his 28 U.S.C. § 2254 petition as an unauthorized, successive § 2254 petition and the district court's order denying his motion for reconsideration.* The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). 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). When, as here, 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. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Limiting our review of the record to the issues raised in Cabbagestalk's informal briefs, we conclude that Cabbagestalk has not made the requisite showing. *See* 4th Cir. R. 34(b); *see also Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief."). Accordingly, we deny a certificate of appealability, deny Cabbagestalk's motion for bail or release pending appeal, and dismiss the appeal. We

* Although the district court construed the motion as a Fed. R. Civ. P. 60(b) motion, it was filed within 28 days of the district court's dismissal order and should thus be construed as a Fed. R. Civ. P. 59(e) motion. *See* Fed. R. Civ. P. 59(e); *MLC Auto., LLC v. Town of S. Pines*, 532 F.3d 269, 277 (4th Cir. 2008).

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