

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7220

ALFONZO HOWARD,

Petitioner - Appellant,

v.

MICHAEL STEPHAN,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Aiken.
Richard Mark Gergel, District Judge. (1:21-cv-03356-RMG)

Submitted: August 24, 2023

Decided: August 28, 2023

Before QUATTLEBAUM and HEYTENS, Circuit Judges, and MOTZ, Senior Circuit
Judge.

Dismissed by unpublished per curiam opinion.

Alfonzo Howard, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Alfonzo Howard seeks to appeal the district court's order accepting the magistrate judge's recommendation and dismissing as untimely Howard's 28 U.S.C. § 2254 petition and the court's order denying Fed. R. Civ. P. 59(e) relief.* *See Gonzalez v. Thaler*, 565 U.S. 134, 148 & n.9 (2012) (explaining that § 2254 petitions are subject to one-year statute of limitations, running from latest of four commencement dates enumerated in 28 U.S.C. § 2244(d)(1)). The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 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*, 565 U.S. at 140-41 (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Howard has not made the requisite showing. 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 this court and argument would not aid the decisional process.

DISMISSED

* Although Howard asserts on appeal that he did not consent to the jurisdiction of a magistrate judge, *see* 28 U.S.C. § 636(c), the district court properly referred Howard's petition under 28 U.S.C. § 636(b) for proposed findings and recommendations.