

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6280

RICHARD L. BABER, JR.,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Director of the Virginia Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at
Roanoke. Pamela Meade Sargent, Magistrate Judge. (7:22-cv-00134-PMS)

Submitted: August 29, 2023

Decided: September 1, 2023

Before KING, AGEE, and BENJAMIN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Bryan Jeffrey Jones, BRYAN J. JONES, ATTORNEY AT LAW, Charlottesville, Virginia,
for Appellant.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Richard L. Baber, Jr., seeks to appeal the magistrate judge's order dismissing as untimely his 28 U.S.C. § 2254 petition.* *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 order is 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 Baber 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

* The parties consented to proceed before a magistrate judge pursuant to 28 U.S.C. § 636(c).