

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6415

QUINDELL MONTRAE' KIRBY

Petitioner - Appellant,

v.

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

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at
Richmond. Henry E. Hudson, Senior District Judge. (3:23-cv-00216-HEH-MRC)

Submitted: August 29, 2023

Decided: September 1, 2023

Before KING, AGEE, and BENJAMIN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Quindell Montrae' Kirby, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Quindell Montrae' Kirby seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 petition as an unauthorized, successive § 2254 petition. The order is 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)).

We have independently reviewed the record and conclude that Kirby has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We also deny Kirby's motion to appoint counsel. 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