

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-6969

KEITH W.R. LOWE,

Petitioner - Appellant,

v.

JONATHAN FRAME, Superintendent, Mount Olive Correctional Complex,

Respondent - Appellee.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. John T. Copenhaver, Jr., Senior District Judge. (2:11-cv-00074)

Submitted: May 21, 2026

Decided: May 27, 2026

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

Dismissed by unpublished per curiam opinion.

Keith W.R. Lowe, Appellant Pro Se. Michael Ray Williams, OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Keith W.R. Lowe seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying Lowe's Fed. R. Civ. P. 60(b) motion for relief from the district court's 2012 order denying relief on Lowe's 28 U.S.C. § 2254 petition. He also moves for appointment of counsel. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). *See generally United States v. McRae*, 793 F.3d 392, 400 & n.7 (4th Cir. 2015). 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 the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 580 U.S. 100, 115-17 (2017). 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. *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 Lowe has not made the requisite showing. In his Rule 60(b) motion, Lowe argued that his mental health conditions prevented him from timely filing the § 2254 petition and warranted equitable tolling. After a thorough review of the record, the district court determined that Lowe demonstrated prolonged periods of competency and the ability to make reasoned and timely filings in other pro se cases during the relevant time periods, such that Lowe failed

to show both that his Rule 60(b) motion was made within a reasonable time and that equitable tolling should apply in the underlying § 2254 proceedings. Discerning no error in the district court's analysis and consideration of the record, we deny Lowe's motions for appointment of counsel and for 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