

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6448

MARION LEON BEA,

Petitioner - Appellant,

v.

HAROLD CLARKE, Director,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, Senior District Judge. (1:16-cv-01524-TSE-MSN)

Submitted: September 7, 2017

Decided: September 19, 2017

Before TRAXLER, WYNN, and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Marion Leon Bea, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marion Leon Bea seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2012) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2012). 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) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). 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. *Slack*, 529 U.S. at 484-85.

The district court characterized Bea's petition as challenging his convictions and dismissed it without prejudice as successive and unauthorized. However, Bea's petition challenged the execution of his sentence. We have independently reviewed the record and conclude that an alternative procedural ground for dismissal renders this appeal futile. Specifically, Bea's petition, which is based on events that occurred in 2004 and 2006, is barred by the one-year statute of limitations. *See* 28 U.S.C. § 2244(d)(1)(D) (2012). Accordingly, we deny a certificate of appealability, deny Bea leave to proceed in forma pauperis, deny Bea's motion for appointment of counsel, and dismiss the appeal. *See Reid v. Angelone*, 369 F.3d 363, 372 n.5 (4th Cir. 2004).

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