

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6409

PETE ALLEN KOCHHEL,

Petitioner - Appellant,

v.

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

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Norfolk. Douglas E. Miller, Magistrate
Judge. (2:12-cv-00420-DEM)

Submitted: June 13, 2013

Decided: June 18, 2013

Before NIEMEYER, KING, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Pete Allen Kochel, Appellant Pro Se. Susan Mozley Harris,
Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Pete Allen Kochel seeks to appeal the district court's order dismissing as untimely his 28 U.S.C. § 2254 (2006) 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) (2006). 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) (2006). 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.

We have independently reviewed the record and conclude that Kochel has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in

* By consent of the parties and designation of the district court, all proceedings were conducted before a magistrate judge.

forma pauperis, 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