

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-6081

CAVELL DEVON WEST,

Petitioner - Appellant,

v.

HAROLD CLARKE, Director, Virginia Department of
Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Richmond. Robert E. Payne, Senior
District Judge. (3:12-cv-00544-REP)

Submitted: June 16, 2014

Decided: July 15, 2014

Before SHEDD, WYNN, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Cavell Devon West, Appellant Pro Se. Rosemary Virginia Bourne,
OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia,
for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Cavell Devon West seeks to appeal the district court's order dismissing as untimely 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.

We have independently reviewed the record and conclude that West has not made the requisite showing because he has not preserved his challenge to the district court's finding that the petition was untimely. Accordingly, we deny a certificate of appealability, deny leave to proceed in 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