

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6776

MICHAEL K. JAMES,

Petitioner - Appellant,

v.

HAROLD CLARKE, Director VDOC,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Liam O'Grady, District Judge. (1:16-cv-00140-LO-MSN)

Submitted: September 13, 2016 Decided: September 15, 2016

Before TRAXLER, AGEE, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Michael K. James, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael K. James 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 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 v. McDaniel, 529 U.S. 473, 484-85 (2000).

We have independently reviewed the record and conclude, as did the district court, that James has not shown that he is entitled to equitable tolling. James v. Clarke, No. 1:16-cv-00140-LO-MSN (E.D. Va. May 13, 2016). Accordingly, for the reasons discussed by the district court, 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