

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6849

COREY PHILLIP HORN,

Petitioner - Appellant,

v.

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

Respondent - Appellee.

Appeal from the United States District Court for the Western
District of Virginia, at Roanoke. Michael F. Urbanski, District
Judge. (7:15-cv-00657-MFU-RSB)

Submitted: January 19, 2017

Decided: January 25, 2017

Before KING, SHEDD, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Corey Phillip Horn, Appellant Pro Se. Benjamin Hyman Katz,
Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Corey Phillip Horn 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 Horn has not made the requisite showing. Accordingly, we deny Horn's motion to appoint counsel, deny 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