

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6188

BENJAMIN WILLIAM FAWLEY,

Petitioner - Appellant,

v.

GENE M. JOHNSON, Director of the Virginia Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Mark S. Davis, District Judge. (2:09-cv-00452-MSD-FBS)

Submitted: June 9, 2017

Decided: July 10, 2017

Before TRAXLER, SHEDD, and WYNN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Benjamin William Fawley, Appellant Pro Se. David Michael Uberman, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Benjamin William Fawley seeks to appeal the district court's order dismissing as untimely and, alternatively, denying as without merit his Fed. R. Civ. P. 60(b) motion for reconsideration of its prior order dismissing as time-barred 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); *Reid v. Angelone*, 369 F.3d 363, 369 (4th Cir. 2004). 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 Fawley has not made the requisite showing.

Accordingly, we deny a certificate of appealability, deny Fawley's motions for a delayed appeal, to expand the record, to address the time bar, to enter facts and evidence, and to raise actual harm, 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