

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-6749

MONTAVIUS ANTOINE JOHNSON,

Petitioner - Appellant,

v.

DAVID MITCHELL,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, Chief District Judge. (3:16-cv-00003-FDW)

Submitted: November 21, 2017

Decided: November 30, 2017

Before SHEDD, DUNCAN, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Montavius Antoine Johnson, Appellant Pro Se. Clarence Joe DelForge, III, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Montavius Antoine Johnson seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2012) petition as untimely filed.* The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 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 Johnson has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions

* This appeal follows our remand to the district court for consideration of Johnson's claims that his petition was timely pursuant to 28 U.S.C. § 2244(d)(1)(C), (D) (2012). *See Johnson v. Mitchell*, 685 F. App'x 214 (4th Cir. 2017) (No. 16-7216). On remand, the district court thoroughly analyzed these arguments, and Johnson's appeal is now properly before this court.

are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED