

UNPUBLISHED

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

No. 18-7019

DE' ANDRE LAMAR THOMAS,

Petitioner - Appellant,

v.

HAROLD CLARK, Director of the Department of Correction,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at
Roanoke. Norman K. Moon, Senior District Judge. (7:18-cv-00344-NKM-RSB)

Submitted: November 29, 2018

Decided: December 4, 2018

Before DUNCAN and KEENAN, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

De' Andre Lamar Thomas, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

De'Andre Lamar Thomas 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 Thomas has not made the requisite showing. Thomas' failure to address the district court's timeliness ruling in his informal brief forecloses his challenge to that dispositive determination. *See* 4th Cir. R. 34(b); *Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014). Accordingly, we deny a certificate of appealability, deny Thomas' motion to proceed in forma pauperis, deny Thomas' motion to appoint counsel, 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