

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6069

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HARRY NOLAN MOODY,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Martin K. Reidinger, Chief District Judge. (1:02-cr-00004-MR-4; 1:16-cv-00192-MR)

Submitted: April 18, 2023

Decided: May 22, 2023

Before GREGORY, Chief Circuit Judge, and WILKINSON and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Joshua B. Carpenter, FEDERAL DEFENDERS OF WESTERN NORTH CAROLINA, INC., Asheville, North Carolina, for Appellant. Amy Elizabeth Ray, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Harry Nolan Moody seeks to appeal the district court’s order denying as untimely his 28 U.S.C. § 2255 motion.* *See Whiteside v. United States*, 775 F.3d 180, 182-83 (4th Cir. 2014) (en banc) (explaining that § 2255 motions are subject to one-year statute of limitations, running from latest of four commencement dates enumerated in 28 U.S.C. § 2255(f)). The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B). 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). When, as here, the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the motion states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Moody 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 are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

* We held this case in abeyance for this court’s decision in *United States v. Littlejohn*, No. 19-6089, which presented the same argument related to the dispositive timeliness issue implicated here. *See United States v. Littlejohn*, No. 19-6089, 2023 WL 1859911 (4th Cir. Feb. 9, 2023). Upon the issuance of the mandate in *Littlejohn*, this appeal was removed from abeyance and is ripe for disposition.