

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7442

DAVID A. POTTER,

Petitioner - Appellant,

v.

BERNARD W. BOOKER, Warden Buckingham Correctional Center,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Roderick Charles Young, Magistrate Judge. (3:18-cv-00661-RCY)

Submitted: April 30, 2020

Decided: May 11, 2020

Before GREGORY, Chief Judge, RUSHING, Circuit Judge, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

David A. Potter, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David A. Potter seeks to appeal the magistrate judge's order dismissing as untimely Potter's 28 U.S.C. § 2254 (2018) petition.* *See Gonzalez v. Thaler*, 565 U.S. 134, 148 & n.9 (2018) (explaining that § 2254 petitions are subject to one-year statute of limitations, running from latest of four commencement dates enumerated in 28 U.S.C. § 2244(d)(1) (2018)). The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2018). 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) (2018). When, as here, the magistrate judge 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. *Gonzalez*, 565 U.S. at 140-41 (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Potter has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, 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

* The parties consented to proceed before a magistrate judge pursuant to 28 U.S.C. § 636(c) (2018).