

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6026

JOWARSKI RUSSELL NEDD,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Director, Virginia Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at
Richmond. John A. Gibney, Jr., Senior District Judge. (3:16-cv-00948-JAG-RCY)

Submitted: March 30, 2022

Decided: April 21, 2022

Before KING and HARRIS, Circuit Judges, and FLOYD, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Jowarski Russell Nedd, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jowarski Russell Nedd seeks to appeal the district court's order denying his second Fed. R. Civ. P. 60(b) motion for relief from the district court's prior order denying relief on Nedd's 28 U.S.C. § 2254 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); *see generally United States v. McRae*, 793 F.3d 392, 400 & n.7 (4th Cir. 2015). 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 the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). 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. *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 Nedd 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

* This case returns to us following a limited remand for the district court to conduct the fact finding necessary to determine whether Nedd's notice of appeal was timely filed under Fed. R. App. P. 4(c)(1).

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

DISMISSED