

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6522

SHERMAN BROWN,

Petitioner - Appellant,

v.

BERNARD W. BOOKER,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at
Roanoke. Elizabeth Kay Dillon, District Judge. (7:16-cv-00576-EKD-JCH)

Submitted: January 29, 2024

Decided: April 11, 2024

Before WILKINSON, QUATTLEBAUM, and RUSHING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Donald P. Salzman, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP,
Washington, D.C., for Appellant.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sherman Brown seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2254 petition and denying reconsideration. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). 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*, 580 U.S. 100, 115-17 (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).

We have independently reviewed the record and conclude that Brown 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

* Brown failed to challenge on appeal the district court's independent determination that his fiber analysis due process claim was barred by the one-year limitations period in 28 U.S.C. § 2254(d). Thus, he forfeited appellate review of that portion of the district court's order. *See Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014).