

UNPUBLISHED

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

No. 20-6180

DARRIS ALTONY NEWSOME,

Petitioner - Appellant,

v.

HAROLD CLARKE,

Respondent - Appellee.

No. 20-6674

DARRIS ALTONY NEWSOME,

Petitioner - Appellant,

v.

HAROLD CLARKE,

Respondent - Appellee.

Appeals from the United States District Court for the Eastern District of Virginia, at
Alexandria. Liam O'Grady, Senior District Judge. (1:20-cv-00050-LO-TCB)

Submitted: July 31, 2020

Decided: August 31, 2020

Before NIEMEYER, HARRIS, and QUATTLEBAUM, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Darris Altony Newsome, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Darris Altony Newsome seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2018) petition as unauthorized and successive. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 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 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 Newsome 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

FILED: October 14, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6180 (L)
(1:20-cv-00050-LO-TCB)

DARRIS ALTONY NEWSOME

Petitioner - Appellant

v.

HAROLD CLARKE

Respondent - Appellee

No. 20-6674
(1:20-cv-00050-LO-TCB)

DARRIS ALTONY NEWSOME

Petitioner - Appellant

v.

HAROLD CLARKE

Respondent - Appellee

B

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Harris, and Judge Quattlebaum.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Darris Newsome,
Petitioner,

v.

Harold Clarke,
Respondent.

)
)
)
)
)
)
)

1:19cv1320 (LO/MSN)

ORDER

On October 4, 2019, the Clerk opened this action upon receipt from Virginia inmate Darris Newsome of a pro se, one-page filing stating that he was “giving notice of his intent to appeal the Order of the Supreme Court [of Virginia] entered on the 17th day of September, 2019.” [Dkt. No. 1]. Since then, no further filings have been forthcoming from Newsome. For the following reasons, this action will be dismissed as either having been improvidently opened or, in the alternative, for lack of jurisdiction.

First, this Court does not decide “appeals” from state court decisions. If Newsome is, in fact, seeking to “appeal” a decision of the Supreme Court of Virginia, this action has been improvidently opened and must be dismissed.

Second, to the extent Newsome is seeking not to file an “appeal,” but rather a second petition for a writ of habeas corpus to obtain collateral relief from his 2012 state court convictions for ~~_____~~, he may not do so until after he has requested and obtained authorization from the United States Court of Appeals for the Fourth Circuit to do so. See 28 U.S.C. § 2244. This is so because this Court considered and dismissed Newsome’s first federal habeas petition, see Newsome v. Clarke, No. 1:15cv337 (E.D. Va.), appeal dismissed, 655 F. App’x 980 (4th Cir. 2016), and this Court is without jurisdiction to consider a second or successive petition absent

the requisite prefiling authorization from the Fourth Circuit. Here, Newsome has not proffered such authorization.

Accordingly, it is hereby

ORDERED that this action be and is DISMISSED.

The Fourth Circuit has held that “[a] jurisdictional dismissal of a collateral attack on a habeas proceeding is so far removed from the merits of the underlying habeas petition that it cannot be said to be a ‘final order[] . . . disposing of the merits of a habeas corpus proceeding . . . challenging the lawfulness of the petitioner’s detention.’” United States v. McRae, 793 F.3d 392, 400 (4th Cir. 2015) (quoting Harbison v. Bell, 556 U.S. 180, 183 (2009)). It has therefore held that a Certificate of Appealability is not required “before determining whether the district court erred in dismissing . . . an unauthorized successive habeas petition.” Id. Accordingly, the Court expresses no view on whether a Certificate of Appealability should be issued here.

To appeal this decision, Newsome must file a written notice of appeal with the Clerk’s office within thirty (30) days of the date of this Order. See Fed. R. App. P. 4(a). A written notice of appeal is a short statement indicating a desire to appeal and including the date of the Order Newsome wishes to appeal. Failure to file a timely notice of appeal waives the right to appeal this decision.

The Clerk is directed to send a copy of this Order to Newsome.

Entered this 26th day of Nov., 2019.

Alexandria, Virginia

/s/ [Signature]
Liam O’Grady
United States District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**