

FILED: October 11, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6415
(3:23-cv-00216-HEH-MRC)

QUINDELL MONTRAE' KIRBY

Petitioner - Appellant

v.

HAROLD W. CLARKE, Director of Virginia Department of Corrections

Respondent - Appellee

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 King, Judge Agee, and Judge Benjamin.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX A

FILED: September 1, 2023

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JUDGMENT

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

UNPUBLISHED

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

No. 23-6415

QUINDELL MONTRAE' KIRBY

Petitioner - Appellant,

v.

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

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, Senior District Judge. (3:23-cv-00216-HEH-MRC)

Submitted: August 29, 2023

Decided: September 1, 2023

Before KING, AGEE, and BENJAMIN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Quindell Montrae' Kirby, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Quindell Montræ Kirby seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 petition as an unauthorized, successive § 2254 petition. 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)*. 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 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 Kirby has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We also deny Kirby's motion to appoint counsel. 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

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

QUINDELL MONTRAE' KIRBY,)
Petitioner,)
v.) Civil Action No. 3:23-cv-216-HEH
HAROLD CLARKE,)
Respondent.)

FINAL ORDER
(Dismissing Successive § 2254 Petition)

In accordance with the accompanying Memorandum Opinion, it is ORDERED
that:

1. The action is DISMISSED WITHOUT PREJUDICE for want of jurisdiction;
2. A certificate of appealability is DENIED;
3. The Clerk is DIRECTED to enter a final appealable Judgment in a Civil Case in favor of Respondent as a separate entry on the docket; and,
4. Petitioner does not request, and the Court does not grant, leave to amend, rendering this order final and appealable. *See Britt v. DeJoy*, 45 F.4th 790, 796 (4th Cir. 2022)

Should Petitioner desire to appeal, a written notice of appeal must be filed with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a notice of appeal within that period may result in the loss of the ability to appeal.

The Clerk is DIRECTED to send a copy of the Memorandum Opinion and Final Order to Petitioner.

It is so ORDERED.


/s/

Henry E. Hudson
Senior United States District Judge

Date: April 14, 2023
Richmond, Virginia

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