

UNPUBLISHED**UNITED STATES COURT OF APPEALS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

No. 24-6179

MICHAEL ANDREW PETERSON,

Petitioner - Appellant,

v.

CHADWICK DOTSON,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L. Wright Allen, District Judge. (2:23-cv-00346-AWA-RJK)

Submitted: August 22, 2024

Decided: August 26, 2024

Before WILKINSON, WYNN, and RICHARDSON, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Michael Andrew Peterson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Michael Andrew Peterson seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing as untimely Peterson's 28 U.S.C. § 2254 petition. *See Gonzalez v. Thaler*, 565 U.S. 134, 148 & n.9 (2012) (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)). The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 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*, 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 Peterson 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

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

MICHAEL ANDREW PETERSON, #1828516,

Plaintiff,

v.

ACTION NO. 2:23cv346

HAROLD W. CLARKE,

Defendant.

FINAL ORDER

Petitioner Michael Andrew Peterson (“Peterson”), a Virginia inmate, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. Peterson challenges his 2018 convictions in the Circuit Court for the City of Frederickburg. *Id.* Respondent filed a motion to dismiss the petition, and Peterson responded to the motion. ECF Nos. 12, 18.

This matter was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. On October 27, 2023, the Magistrate Judge prepared a report and recommendation, recommending that respondent’s motion to dismiss, ECF No. 12, be granted, and the petition for a writ of habeas corpus, ECF No. 1, be denied and dismissed with prejudice as barred by the statute of limitations. ECF No. 24. Each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge. *Id.* at 5. On December 5, 2023, the Court received Peterson’s objections to the

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findings and recommendations made by the Magistrate Judge. ECF No. 28.

In his objections, Peterson requested an evidentiary hearing. ECF No. 28, at 44. Because Peterson “failed to forecast any evidence beyond that already contained in the record, or otherwise to explain how his claim would be advanced by an evidentiary hearing,” his request for an evidentiary hearing is **DENIED**. *Robinson v. Polk*, 438 F.3d 350, 368 (4th Cir. 2006) (quoting *Cardwell v. Greene*, 152 F.3d 331, 337 (4th Cir. 1998), overruled on other grounds by *Bell v. Jarvis*, 236 F.3d 149 (4th Cir. 2000)).

The Court, having reviewed the record and examined the objections filed by Peterson to the report and recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the report and recommendation. The Court, therefore, **ORDERS** that respondent’s motion to dismiss, ECF No. 12, is **GRANTED**, and the petition for a writ of habeas corpus, ECF No. 1, is **DENIED** and **DISMISSED WITH PREJUDICE** as barred by the statute of limitations.

Finding that the basis for dismissal of Peterson’s section 2254 petition is not debatable, and alternatively finding that Peterson has not made a “substantial showing of the denial of a constitutional right,” a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts.; *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Peterson is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the

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Fourth Circuit. Fed. R. App. P. 22(b); Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts. If Peterson intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Peterson may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. (437 F.3d 103, 104, 105, 106, 107, 108)

The Clerk shall mail a copy of this Final Order to all counsel of record.

Arenda L. Wright Allen

Arenda L. Wright Allen

United States District Judge
Norfolk, Virginia

December 15, 2023

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