

**UNPUBLISHED**UNITED STATES COURT OF APPEALS  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

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**No. 22-6362**

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THOMAS M. TULLY,

Petitioner - Appellant,

v.

GENE JOHNSON, Director, Virginia Department of Corrections,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at  
Richmond. John A. Gibney, Jr., Senior District Judge. (3:10-cv-00299-JAG-EWH)

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Submitted: September 22, 2022

Decided: September 27, 2022

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Before WILKINSON, DIAZ, and RUSHING, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Thomas M. Tully, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Thomas M. Tully has noted an appeal from the district court's order denying on the merits his Fed. R. Civ. P. 60(b) motion for relief from the court's prior judgment denying relief on his 28 U.S.C. § 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 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)).

Tully's motion challenged the validity of his convictions and should have been construed as a successive § 2254 petition.\* *See Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005); *United States v. McRae*, 793 F.3d 392, 397-99 (4th Cir. 2015). In the absence of pre-filing authorization from this court, the district court lacked jurisdiction to entertain

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\* The district court denied relief on Tully's prior § 2254 petition on the merits in 2011.

Tully's successive § 2254 petition. *See* 28 U.S.C. § 2244(b)(3). 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*