UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 05-7492

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JOSEPH M. HERBIN,

                              Petitioner - Appellant,

        versus

GENE M. JOHNSON,

                              Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Walter D. Kelley, Jr., District Judge. (CA-05-116-2)

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Submitted: December 22, 2005   Decided: January 4, 2006

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Before WIDENER, NIEMEYER, and KING, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Joseph M. Herbin, Appellant Pro Se. Donald Eldridge Jeffrey, III, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

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PER CURIAM:

Joseph M. Herbin, a state prisoner, seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing as untimely Herbin's petition filed under 28 U.S.C. § 2254 (2000). The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). 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) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Herbin 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 the court and argument would not aid the decisional process.

DISMISSED