

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6610

STEPHANO COLOSI, JR.,

Petitioner - Appellant,

v.

GENE M. JOHNSON, Director of the Virginia Department of
Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Norfolk. Jerome B. Friedman, District
Judge. (2:06-cv-00033-JBF-TEM)

Submitted: October 30, 2009

Decided: November 13, 2009

Before WILKINSON, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Stephano Colosi, Jr., Appellant Pro Se. Alice Theresa
Armstrong, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond,
Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Stephano Colosi, Jr. seeks to appeal the district court's orders entered on February 24, 2009, and March 20, 2009, denying his post-judgment motions in his 28 U.S.C. § 2254 (2006) action. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. See 28 U.S.C. § 2253(c)(1) (2006). 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) (2006). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude Colosi has not made the requisite showing.

Insofar as Colosi indicates he is also appealing the April 24, 2008 order denying his motion to set aside the district court's order denying his § 2254 petition, we note the appeal is untimely. Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court

extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order was entered on the docket on April 24, 2008. On August 8, 2008, the district court reopened the appeal period and stated that "out of an abundance of caution, the petitioner is ADVISED that he may appeal from the final Order denying his Rule 60(b) motion by forwarding a written notice of appeal to the Clerk" within thirty days of the date of the order. Colosi did not file a notice of appeal within thirty days of the August 8, 2008 order. Rather, he filed within ten days, motions under Rules 52 and 60 of the Federal Rules of Civil Procedure. While those motions delayed the start of the appeal period from the August 8, 2008 order until the motions were disposed, the motions did not have the same effect upon the April 24, 2008 order because the motions were filed beyond the ten-day period as to that order. See Fed. R. Civ. P. 4(a)(4). Because Colosi failed to file a timely notice of appeal from the April 24, 2008 order, we do not have jurisdiction to review that order.

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