UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7199

FATE T. MCCLURKIN,

Petitioner - Appellant,

v.

ROBERT STEVENSON, Warden, Broad River Correctional Institution,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Terry L. Wooten, District Judge. (0:08-cv-00106-TLW)

Submitted: March 2, 2010 Decided: March 11, 2010

Before WILKINSON, DUNCAN, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Fate T. McClurkin, Appellant Pro Se. Donald John Zelenka, Deputy Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Fate T. McClurkin seeks to appeal the district court's orders accepting the recommendation of the magistrate judge and dismissing his petition under 28 U.S.C. § 2254 (2006), and denying his motion for reconsideration. Our review discloses that McClurkin's appeal of the order dismissing the § 2254 petition is untimely. The order was entered on the docket on March 23, 2009, and his notice of appeal was dated June 16, 2009. See Houston v. Lack, 487 U.S. 266 (1988). We accordingly dismiss the appeal of that order for lack of jurisdiction. See Fed. R. App. P. 4(a)(1)(A).

The district court's order denying McClurkin's motion pursuant to Fed. R. Civ. P. 60(b) is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006); Reid v. Angelone, 369 F.3d 363, 369 (4th Cir. 2004). 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. 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 that McClurkin 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