

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7019

RONALD GRAHAM,

Plaintiff - Appellant,

versus

TRACY RAY, Warden; T. W. ARMENTROUT; LARRY
MULLINS; BOB MULLINS; GENE JOHNSON, Director;
JOHN FABE, Deputy Director,

Defendants - Appellees.

Appeal from the United States District Court for the Western
District of Virginia, at Roanoke. Jackson L. Kiser, Senior
District Judge. (CA-05-265-7)

Submitted: November 30, 2005

Decided: March 7, 2006

Before WILKINSON and NIEMEYER, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Dismissed in part; affirmed in part by unpublished per curiam
opinion.

Ronald Graham, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Ronald Graham, a state prisoner, filed a 42 U.S.C. § 1983 (2000) action challenging his disciplinary conviction for institutional assault. As a result of the conviction, Graham lost sixty days of good time credits. He sought damages and restoration of the lost credits. The district court dismissed the action, finding that, under Heck v. Humphrey, 512 U.S. 477 (1994), the suit for damages could not proceed. The court also determined that Graham's plea for restoration of good time credits sounded in habeas corpus and concluded that dismissal was appropriate because Graham had not exhausted his state remedies. See 28 U.S.C. § 2254(b)(1)(A); Preiser v. Rodriguez, 411 U.S. 475, 487 (1973). Graham moved for reconsideration of the court's order, but the court denied the motion. Graham appeals.

To the extent Graham seeks to appeal that portion of the district court's order denying relief under 28 U.S.C. § 2254 and the order denying the motion for reconsideration, an appeal may not be taken from the final order in a § 2254 proceeding 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 for claims addressed by a district court 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 both that the

district court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 338 (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 Graham has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss that part of the appeal.

To the extent Graham appeals that portion of the district court's order denying relief on his § 1983 complaint under 18 U.S.C. § 1915A(b) (2000) and the order denying the motion for reconsideration, we have reviewed the record and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Graham v. Ray, No. CA-05-265-7 (W.D. Va. May 3, 2005, and June 23, 2005). We deny the motion for emergency relief and 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 IN PART;
AFFIRMED IN PART