

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6550

WALTER FRANK AGEE,

Petitioner - Appellant,

versus

THOMAS L. MCBRIDE, Warden, Mount Olive
Correctional Complex,

Respondent - Appellee.

Appeal from the United States District Court for the Northern
District of West Virginia, at Elkins. Robert E. Maxwell, Senior
District Judge. (2:04-cv-00013-REM)

Submitted: August 31, 2006

Decided: September 6, 2006

Before MICHAEL, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Walter Frank Agee, Appellant Pro se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Walter Frank Agee seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2000) petition. 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 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 Agee has not made the requisite showing. Accordingly, we deny Agee's motion to appoint counsel, 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