

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-7064

JOHN WILLIE DUPREE,

Petitioner - Appellant,

versus

MR. PADULA, Warden; HENRY MCMASTER, Attorney
General for South Carolina,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Columbia. Cameron McGowan Currie, District
Judge. (3:05-cv-00667-CMC)

Submitted: August 24, 2006

Decided: September 1, 2006

Before KING, SHEDD, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

John Willie Dupree, Appellant Pro Se. Donald John Zelenka, Chief
Deputy Attorney General, John William McIntosh, Assistant Attorney
General, Derrick K. McFarland, OFFICE OF THE ATTORNEY GENERAL OF
SOUTH CAROLINA, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

John Willie DuPree 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, and the district court's order denying his "Motion in Opposition to Judge's Opinion and Order" and "Motion to Show Cause and Actual Prejudice/Innocence," which the district court construed as motions for reconsideration. Only DuPree's appeal of the district court's order denying his post-judgment motions is properly before this court.* 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,

*The district court's judgment denying relief on DuPree's § 2254 petition was entered on March 29, 2006. DuPree's post-judgment motions are considered filed on April 27, 2006, the date he signed them. Houston v. Lack, 487 U.S. 266 (1988). Because the motions were not filed within ten days of the entry of the district court's order, the time for filing a notice of appeal from that order was not tolled, and expired after thirty days, on April 28, 2006. Fed. R. App. P. 4(a)(1)(A). The district court's order denying the post-judgment motions was entered on May 9, 2006. DuPree's notice of appeal is considered filed on May 25, 2006, and is timely only as to the order denying the post-judgment motions.

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 DuPree 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