

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-7838

ERIC T. PFEIFLE,

Petitioner - Appellant,

versus

GENE M. JOHNSON, Director,

Respondent - Appellee.

No. 06-7899

ERIC T. PFEIFLE,

Petitioner - Appellant,,

versus

GENE M. JOHNSON, Director,

Respondent - Appellee.

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (1:06-cv-00749-JCC)

Submitted: January 18, 2007

Decided: January 24, 2007

Before WILKINSON, TRAXLER, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Eric T. Pfeifle, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eric T. Pfeifle seeks to appeal the district court's order directing him to show cause why his 28 U.S.C. § 2254 (2000) petition should not be dismissed as untimely and the final order dismissing his § 2254 petition as untimely and barred by his procedural default.* The orders are 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 Pfeifle has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeals. We also deny Pfeifle's motion to appoint counsel. We

*Pfeifle first appealed the district court's September 12, 2006 show cause order. It is questionable whether his notice of appeal was timely under Houston v. Lack, 487 U.S. 266 (1988). Because Pfeifle filed a timely notice of appeal of the final judgment order, the preliminary notice of appeal is effectively superseded by the second notice of appeal.

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