UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-8014

THOMAS AGEE FITZGERALD,

Petitioner - Appellant,

versus

GENE M. JOHNSON, Director, Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Glen E. Conrad, District Judge. (7:06-cv-00427-GEC)

Submitted: June 6, 2007 Decided: July 12, 2007

Before WILLIAMS, Chief Judge, TRAXLER, Circuit Judge, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Thomas Agee Fitzgerald, Appellant Pro Se. Donald Eldridge Jeffrey, III, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Thomas Agee Fitzgerald seeks to appeal the district court's order 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 Fitzgerald has not made the requisite showing. Accordingly, we deny Fitzgerald's motion for a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal

*Fitzgerald also challenges the district court's rejection of his request to proceed on appeal in forma pauperis. Because this court granted Fitzgerald in forma pauperis status for purposes of this appeal, his challenge to the district court's refusal to do so is moot.

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED