

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 07-6740

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JACK SIMPSON, JR.,

Petitioner - Appellant,

versus

WARDEN, BROAD RIVER CORRECTIONAL INSTITUTION,

Respondent - Appellee.

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Appeal from the United States District Court for the District of South Carolina, at Columbia. David C. Norton, District Judge. (3:06-cv-02629-DCN)

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Submitted: December 20, 2007                      Decided: December 26, 2007

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Before MICHAEL and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Jack Simpson, Jr., Appellant Pro Se. Donald John Zelenka, SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE, Columbia, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jack Simpson, Jr., 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 Simpson has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. We dispense with oral argument because the facts and

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\*While the district judge appeared to indicate that Simpson failed to timely file objections to the magistrate judge's report and recommendation, we find that Simpson's objections were timely filed. See Fed. R. Civ. P. 6(a), (e), 72(a); Houston v. Lack, 487 U.S. 266, 276 (1988). Given that the district court nonetheless reviewed the record de novo, any error associated with the timeliness of Simpson's objections is harmless. See generally, Orpiano v. Johnson, 687 F.2d 44, 47-48 (4th Cir. 1982).

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

DISMISSED