

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-7438

ROLAND EVANS,

Petitioner - Appellant,

versus

GENE M. JOHNSON, Director of the Virginia
Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Norfolk. Walter D. Kelley, Jr., District
Judge. (2:07-cv-00025-WDK)

Submitted: November 21, 2007

Decided: December 4, 2007

Before TRAXLER, SHEDD, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Gail Avery Ball, BALL LEGAL FIRM, PC, Norfolk, Virginia, for
Appellant. Jonathan Mark Larcomb, OFFICE OF THE ATTORNEY GENERAL
OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Roland Evans 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 Evans 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

*Because Evans properly raised his allegations of juror misconduct on direct appeal, the district court's ruling that this claim was procedurally defaulted is debatable or wrong. Nevertheless, we decline to issue a certificate of appealability as to this issue because our review of the record leaves no uncertainty that the state court denial of this claim did not result in a decision contrary to, or an unreasonable application of, clearly established federal law. See 28 U.S.C. § 2254(d)(1) (2000).

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

DISMISSED