

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6076

CARNELL DAVIS,

Petitioner - Appellant,

v.

WARDEN, LIEBER CORRECTIONAL INSTITUTION,

Respondent - Appellee,

and

STATE OF SOUTH CAROLINA,

Respondent.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Henry M. Herlong, Jr., District Judge. (9:07-cv-03318-HMH)

Submitted: March 27, 2008

Decided: April 4, 2008

Before TRAXLER* and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

*Judge Traxler did not participate in consideration of this case. The opinion is filed by a quorum of the panel pursuant to 28 U.S.C. § 46(d).

Carnell Davis, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Carnell Davis 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 for failure to exhaust state court remedies. Our review of Davis' petition reveals that it merely repeats arguments he presented in a prior petition under § 2254. Davis' petition is, therefore, a successive petition to vacate or modify sentence under § 2254 for which Davis has not received authorization under 28 U.S.C. § 2244 (2000). See United States v. Winestock, 340 F.3d 200, 206-07 (4th Cir. 2003).

An appeal may not be taken from the final order in a § 2254 proceeding unless a circuit justice or judge issues a certificate of appealability. See 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. See 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 Davis

has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.

To the extent Davis' notice of appeal and informal brief could be construed as a motion for authorization to file a successive § 2254 petition, we deny such authorization because he has not shown he would benefit from newly discovered evidence or retroactive application of a new rule of constitutional law. See Winestock, 340 F.3d at 208. We also deny Davis' motion for an en banc hearing. 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