

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7685

DERRICK HARRELL,

Petitioner - Appellant,

v.

ANTHONY HATHAWAY,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, Senior District Judge. (5:07-hc-02052-H)

Submitted: March 6, 2009

Decided: April 8, 2009

Before MICHAEL, SHEDD, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Derrick Harrell, Appellant Pro Se. Clarence Joe DelForge, III, Assistant Attorney General, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick Harrell seeks to appeal the district court's order denying his post-judgment motion, construed by the court as a motion pursuant to Fed. R. Civ. P. 59(e), seeking reconsideration of the court's order dismissing as untimely Harrell's 28 U.S.C. § 2254 (2006) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. See 28 U.S.C. § 2253(c)(1) (2006). 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) (2006). 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).

On appeal, we confine our review to the issues raised in the informal brief. See 4th Cir. R. 34(b). Harrell's brief alleges no error committed by the district court in denying his motion, and we discern none. Accordingly, we deny a certificate of appealability and dismiss the appeal. 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