

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7705

FRANKLIN ANTONIO BENJAMIN,

Petitioner - Appellant,

v.

STATE OF SOUTH CAROLINA; ANTHONY PADULA, Warden of Lee
Correctional Institution; HENRY MCMASTER, Attorney General,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Rock Hill. Terry L. Wooten, District Judge.
(0:07-cv-02442-TLW)

Submitted: November 13, 2008

Decided: November 21, 2008

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Franklin Antonio Benjamin, Appellant Pro Se. William Edgar
Salter, III, Assistant Attorney General, Donald John Zelenka,
Deputy Assistant Attorney General, Columbia, South Carolina, for
Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

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

DISMISSED