

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8376

LARRY D. PHILLIPS,

Petitioner - Appellant,

v.

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. James E. Bradberry,
Magistrate Judge. (2:08-cv-00383-JEB)

Submitted: April 23, 2009

Decided: May 4, 2009

Before MICHAEL, GREGORY, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Larry D. Phillips, Appellant Pro Se. Eugene Paul Murphy, OFFICE
OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry D. Phillips seeks to appeal the magistrate judge's order denying relief on his 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). We have independently reviewed the record and conclude that Phillips 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

*This case was decided by a magistrate judge with the parties' consent under 28 U.S.C. § 636(c) (2006).

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

DISMISSED