

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8402

MELVIN CORNNELL DODSON,

Petitioner - Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Defendant - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Jackson L. Kiser, Senior District Judge. (7:08-cv-00566-jlk-mfu)

Submitted: June 18, 2009

Decided: June 22, 2009

Before NIEMEYER, GREGORY, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Melvin Cornnell Dodson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Melvin Cornnell Dodson seeks to appeal the district court's dismissal of his second 28 U.S.C. § 2254 (2006) petition as successive because Dodson failed to obtain certification to file a successive petition from this court. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 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. 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 Dodson has not made the requisite showing. Accordingly, we deny Dodson's motion for a certificate of appealability and dismiss the appeal.

Additionally, we construe Dodson's notice of appeal and informal brief as an application to file a second or successive petition under 28 U.S.C. § 2254. United States v. Winestock, 340 F.3d 200, 208 (4th Cir. 2003). In order to

obtain authorization to file a successive 28 U.S.C. § 2254 petition, the claims presented must not have been presented in a prior petition and must be based on either: (1) "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable;" or (2) newly discovered evidence, not previously discoverable through the exercise of due diligence, that "would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C. § 2244(b)(1), (2) (2006). Dodson's claim does not satisfy any of the above criteria. Accordingly, we deny Dodson authorization to file a successive 28 U.S.C. § 2254 petition.

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