UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6101

JOHN W. HEARNE,

Petitioner - Appellant,

v.

KEITH DAVIS, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, Magistrate Judge. (3:08-cv-00171-MHL)

Submitted: April 21, 2009 Decided: May 6, 2009

Before WILKINSON, MOTZ, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

John W. Hearne, Appellant Pro Se. Jennifer Conrad Williamson, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond. Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John W. Hearne seeks to appeal the magistrate judge's* order dismissing as untimely his 28 U.S.C. § 2254 (2006) petition. 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 Hearne has not made the requisite showing. Accordingly, we deny his motion for a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal

* Both parties consented to proceed before a magistrate judge pursuant to 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