

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6758

AARON S. PRETTY, JR.,

Petitioner - Appellant,

v.

DAVID MITCHELL, Superintendent of Mountain View Correctional
Institution; STATE OF NORTH CAROLINA,

Respondents - Appellees.

Appeal from the United States District Court for the Middle
District of North Carolina, at Durham. William L. Osteen, Jr.,
District Judge. (1:09-cv-00140-WO-PTS)

Submitted: June 18, 2009

Decided: June 25, 2009

Before NIEMEYER, GREGORY, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Aaron S. Pretty, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Aaron S. Petty, Jr., seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing without prejudice his 28 U.S.C. § 2254 (2006) petition as successive. 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 Petty has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, 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