

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6947

TONY TYRONE WILSON,

Petitioner - Appellant,

v.

STATE OF SOUTH CAROLINA; WARDEN, BROAD RIVER CORRECTIONAL
INSTITUTION,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Columbia. Sol Blatt, Jr., Senior District
Judge. (3:09-cv-00303-SB)

Submitted: January 27, 2010

Decided: February 10, 2010

Before GREGORY, SHEDD, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Tony Tyrone Wilson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tony Tyrone Wilson seeks to appeal the district court's order adopting the recommendation of the magistrate judge and dismissing his 28 U.S.C. § 2254 (2006) petition as an unauthorized, successive petition.¹ The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006); see Jones v. Braxton, 392 F.3d 683, 685, 691 (4th Cir. 2004) (certificate of appealability required to appeal dismissal of habeas petition as successive and unauthorized). 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 Wilson has

¹ This appeal is back from a limited remand to the district court, in which the district court found good cause to extend the time period in which Wilson could file his notice of appeal. Fed. R. App. P. 4(a)(1), (5). Therefore, the appeal is timely.

not made the requisite showing.² 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

² On appeal, Wilson alleges he never received the February 25, 2009 report and recommendation of the magistrate judge. This assertion is supported by the record, and the district court on limited remand voiced its willingness to permit Wilson to file objections to the magistrate judge's report should this court remand the case for that purpose. However, because the record makes clear that Wilson's petition is an unauthorized successive habeas petition, over which the district court has no jurisdiction, we decline to remand the case for that purpose.