UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 09-7796

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SANDY GAINEY,

               Petitioner - Appellant,

      v.

SOUTH CAROLINA; ANTHONY PADULA, Warden of the Lee
Correctional Institution,

               Respondents - Appellees.

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Appeal from the United States District Court for the District of
South Carolina, at Beaufort. Patrick Michael Duffy, Senior
District Judge. (9:08-cv-03900-PMD)

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Submitted: April 29, 2010   Decided: May 3, 2010

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Before MOTZ and DUNCAN, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Sandy Gainey, Appellant Pro Se. Melody Jane Brown, Assistant
Attorney General, Donald John Zelenka, Deputy Assistant Attorney
General, Columbia, South Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sandy Gainey seeks to appeal the district court's order accepting the recommendation of the magistrate judge and 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 Gainey has not made the requisite showing. Accordingly, we deny leave to proceed in forma pauperis, 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