UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7861

GARY L. PETTY,

Petitioner - Appellant,

v.

ANTHONY J. PADULA, Warden at Lee Correctional Institution,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. R. Bryan Harwell, District Judge. (0:08-cv-02967-RBH)

Submitted: February 25, 2010 Decided: March 4, 2010

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

Dismissed by unpublished per curiam opinion.

Gary L. Petty, Appellant Pro Se. Donald John Zelenka, Deputy Assistant Attorney General, William Edgar Salter, III, Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gary L. Petty seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying 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 Petty has not made the requisite showing. 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