

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6644

TONY RICARDO WILLIAMS,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:13-hc-02063-BO)

Submitted: September 24, 2013

Decided: October 4, 2013

Before MOTZ, KING, and KEENAN, Circuit Judges.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

Tony Ricardo Williams, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tony Ricardo Williams seeks to appeal the district court's initial order denying relief on his 28 U.S.C. § 2254 (2006) petition and the court's subsequent order reaffirming the dismissal of his § 2254 petition after Williams filed a corrected § 2254 petition.* The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (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). When, as here, the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). Although the district court did not specifically address all of Williams' claims in its initial order denying § 2254 relief, we have independently reviewed the record and conclude that Williams has not made the

* Although Williams did not file an amended notice of appeal to include the second order, his informal appellate brief may serve as the notice of appeal, and we deem it timely filed. See Smith v. Barry, 502 U.S. 244, 245 (1992) (holding that appellate brief may serve as notice of appeal provided it otherwise complies with rules governing proper timing and substance).

requisite showing for a certificate of appealability. Accordingly, we deny a certificate of appealability in part and dismiss this portion of the appeal.

Turning to Williams' appeal of the district court's order reaffirming the denial of relief, we note that Williams' appeal of the district court's initial order denying relief was pending in this court at the time the district court entered its second order. Because the second order was not in aid of the pending appeal, the district court was without jurisdiction to enter it. See Wolfe v. Clarke, 718 F.3d 277, 281 n.3 (4th Cir. 2013); Dixon v. Edwards, 290 F.3d 699, 709 n.14 (4th Cir. 2002). Accordingly, we grant a certificate of appealability in part for the purpose of modifying the district court's order to reflect that it was without jurisdiction to consider Williams' corrected § 2254 petition and affirm the order as modified.

We grant Williams leave to proceed in forma pauperis on appeal and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this Court and argument would not aid the decisional process.

DISMISSED IN PART;
AFFIRMED IN PART