

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 14-7434**

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JOSHUA PATERNOSTER-COZART,

Petitioner - Appellant,

v.

HAROLD CLARKE, Director V.D.O.C.,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Mark S. Davis, District Judge. (2:13-cv-00539-MSD-LRL)

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Submitted: February 27, 2015

Decided: May 21, 2015

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Before WYNN and DIAZ, Circuit Judges, and DAVIS, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Joshua Paternoster-Cozart, Appellant Pro Se. Richard Carson Vorhis, Senior Assistant Attorney General, Kate Elizabeth Dwyre, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Joshua Paternoster-Cozart seeks to appeal the district court's order accepting, in part, the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2012) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2012). 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) (2012). When 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). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

On October 14, 2014, while this appeal was pending, Paternoster-Cozart was released from incarceration. We may address sua sponte whether an issue on appeal presents "a live case or controversy . . . since mootness goes to the heart of the Article III jurisdiction of the courts." Friedman's Inc. v.

Dunlap, 290 F.3d 191, 197 (4th Cir. 2002) (internal quotation marks omitted). Because Paternoster-Cozart has already served his term of imprisonment and has not identified any collateral consequences of it, there is no longer any live controversy regarding the length of his confinement. Therefore, his challenge regarding additional credit against his sentence is moot.

Paternoster-Cozart also challenges the district court's denial of relief on his First Amendment claim. The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. United States v. Midgette, 478 F.3d 616, 621 (4th Cir. 2007). Paternoster-Cozart has waived appellate review by failing to file an objection to the magistrate judge's recommendation as to this claim after receiving proper notice.

Finally, Paternoster-Cozart challenges the district court's order denying his motions for leave to alter or amend and for the appointment of counsel. By failing to brief these issues, however, he has waived review of them. See United States v. Al-Hamdi, 356 F.3d 564, 571 n.8 (4th Cir. 2004) ("It is a well settled rule that contentions not raised in the argument section of the opening brief are abandoned.").

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 this court and argument would not aid the decisional process.

DISMISSED