

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6967

CURTIS KIRKPATRICK,

Petitioner - Appellant,

v.

BUTCH JACKSON, Supt. of Nash Corr.,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. Russell A. Eliason, Magistrate Judge. (1:07-cv-00918-RAE)

Submitted: September 24, 2008

Decided: October 3, 2008

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

Dismissed by unpublished per curiam opinion.

Curtis Kirkpatrick, Appellant Pro Se. Clarence Joe DelForge, III, Assistant Attorney General, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Curtis Kirkpatrick seeks to appeal the magistrate judge's* orders dismissing as untimely his 28 U.S.C. § 2254 (2000) petition and denying his motion for a certificate of appealability. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). 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 Kirkpatrick 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

*The parties consented to proceed before the magistrate judge pursuant to 28 U.S.C. § 636(c) (2000).