

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6603

ERIC MCDONALD EVANS,

Petitioner - Appellant,

v.

GEORGE M. HINKLE,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, Magistrate Judge. (3:08-cv-00307-MHL)

Submitted: August 26, 2009

Decided: September 2, 2009

Before TRAXLER, Chief Judge, and GREGORY and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Eric McDonald Evans, Appellant Pro Se. Josephine Frances Whalen, Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eric McDonald Evans seeks to appeal the magistrate judge's order* 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 Evans 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 the magistrate judge's jurisdiction under 28 U.S.C. § 636(c) (2006).