

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7766

EUGENE KING,

Petitioner - Appellant,

v.

ROBERT M. STEVENSON,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Terry L. Wooten, District Judge. (0:12-cv-01130-TLW)

Submitted: February 6, 2013

Decided: February 12, 2013

Before WILKINSON, KING, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Eugene King, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eugene King seeks to appeal the district court's order accepting the magistrate judge's recommendation and dismissing his 28 U.S.C. § 2254 (2006) petition without prejudice as an unauthorized second or successive § 2254 petition.

King filed the petition the same month he filed his first § 2254 petition. As he has explained in his objections to the magistrate judge's recommendation and on appeal, he did not intend to file two § 2254 petitions but rather sought to obtain a clock-stamped copy of his petition from the district court for his records. The district court docketed the numerically second petition in a new action, and the magistrate judge recommended dismissing the petition as successive even though the first petition was still pending and had not been adjudicated.

We grant a certificate of appealability on the issue of whether the district court erred in dismissing the instant petition as an unauthorized second or successive petition within the meaning of 28 U.S.C. § 2244(b) (2006), but we affirm the district court's dismissal of the petition without prejudice on the ground that it was improvidently docketed as a new petition.

We deny a certificate of appealability on any other issues raised by King. Accordingly, we grant in part and deny in part King's motion for a certificate of appealability, and we deny his motion for appointment of counsel. 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.

AFFIRMED