

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-6105

WILLIAM STEWART MALONE, JR.,

Petitioner - Appellant,

versus

DIRECTOR OF VIRGINIA DEPARTMENT OF
CORRECTIONS,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (CA-00-1562-AM)

Submitted: October 15, 2003

Decided: October 24, 2003

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

Dismissed by unpublished per curiam opinion.

William Stewart Malone, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

William Stewart Malone, Jr., seeks to appeal the district court's order denying relief on his petition filed under 28 U.S.C. § 2254 (2000). Pursuant to a remand order of this court, the district court attempted to address Malone's pending motion under Fed. R. Civ. P. 60(b). When it became apparent that Malone was no longer incarcerated and had failed to apprise the district court of a forwarding address, the district court dismissed the action. Accordingly, Malone's appeal of the denial of his § 2254 petition is now ripe for review.

An appeal may not be taken from the final order in a habeas corpus proceeding 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 his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, ___, 123 S. Ct. 1029, 1040 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir.), cert. denied, 534 U.S. 941 (2001). We have independently reviewed the record and conclude that Malone has not made the requisite showing. 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 the court and argument would not aid the decisional process.

DISMISSED