

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6555

KENNY DREW SAYRE, SR.,

Petitioner - Appellant,

versus

THOMAS MCBRIDE, Warden,

Respondent - Appellee,

and

MICHAEL COLEMAN, Acting Warden,

Respondent.

Appeal from the United States District Court for the Northern
District of West Virginia, at Clarksburg. Irene M. Keeley, Chief
District Judge. (CA-02-41-1)

Submitted: October 31, 2003

Decided: December 3, 2003

Before MICHAEL, MOTZ, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Kenny Drew Sayre, Sr., Appellant Pro Se. Dawn Ellen Warfield,
OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West
Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Kenny Drew Sayre, a state prisoner, seeks to appeal the district court's order denying relief on his petition filed under 28 U.S.C. § 2254 (2000), and his motion for a private investigator. The order is 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 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, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Sayre has not made the requisite showing.* Accordingly, we deny a certificate of appealability and dismiss the appeal. We also deny Sayre's motion for appointment of counsel and 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.

* We decline to address the issues Sayre raises for the first time on appeal. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993) (holding that claims raised for first time on appeal will not be considered absent exceptional circumstances).

DISMISSED