

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7558

DUY NGOC TRAN,

Petitioner - Appellant,

versus

GENE JOHNSON, Director of the Virginia
Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Richmond. James R. Spencer, District
Judge. (CA-03-79-3)

Submitted: December 11, 2003

Decided: December 23, 2003

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

Dismissed by unpublished per curiam opinion.

Duy Ngoc Tran, Appellant Pro Se. Virginia Bidwell Theisen, OFFICE
OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Duy Ngoc Tran seeks to appeal the district court's order dismissing his petition filed under 28 U.S.C. § 2254 (2000) as untimely. An appeal may not be taken from the final order in a § 2254 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, 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 Tran has not made the requisite showing. Accordingly, we deny Tran's motion for transcripts at government expense, 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