

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6150

OSCAR A. ESCOBAR,

Petitioner - Appellant,

versus

RONALD J. ANGELONE,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (CA-01-1663-AM)

Submitted: May 26, 2004

Decided: July 14, 2004

Before MOTZ, KING, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Oscar A. Escobar, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Oscar A. Escobar seeks to appeal the district court's order denying Escobar's motion under Fed. R. Civ. P. 60(b), in which Escobar sought to vacate the district court's order denying his petition under 28 U.S.C. § 2254 (2000). The order is appealable only if a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000); Reid v. Angelone, ___ F.3d ___, ___, No. 03-6146, 2004 WL 1119646 at *4, (4th Cir. May 19, 2004). 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 Escobar 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

*We note that even if the Rule 60(b) motion was subject to the "reasonable time" filing limit, rather than the one-year limit applicable to motions under subsections (1), (2), and (3) of Rule 60(b), the underlying denial of Escobar's § 2254 petition was not debatable or wrong.

materials before the court and argument would not aid the decisional process.

DISMISSED