

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 04-6463**

---

BERTRAM NORMAN MCELHINEY,

Petitioner - Appellant,

versus

SID HARKLEROAD,

Respondent - Appellee.

---

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Chief District Judge. (CA-02-325-3-2MU)

---

Submitted: July 29, 2004

Decided: August 4, 2004

---

Before LUTTIG, MICHAEL, and DUNCAN, Circuit Judges.

---

Dismissed by unpublished per curiam opinion.

---

Bertram Norman McElhiney, Appellant Pro Se. Clarence Joe DelForge, III, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Bertram Norman McElhiney seeks to appeal the district court's order denying relief on his Fed. R. Civ. P. 60(b) motion seeking reconsideration of the district court's order denying as untimely McElhiney's petition filed under 28 U.S.C. § 2254 (2000). 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 McElhiney has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. McElhiney's motion to proceed on appeal in forma pauperis is denied. 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