

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6720

MARK TODD SHOWALTER,

Petitioner - Appellant,

versus

D. A. BRAXTON, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Samuel G. Wilson, District Judge. (CA-04-289-SGW)

Submitted: September 28, 2005

Decided: October 13, 2005

Before WILKINSON, LUTTIG, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Mark Todd Showalter, Appellant Pro Se. Robert H. Anderson, III, 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Unpublished opinions are not binding precedent in this circuit.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:

Mark Todd Showalter seeks to appeal the district court's order dismissing as untimely his petition filed under 28 U.S.C. § 2254 (2000). An appeal may not be taken from a 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 the district court's assessment of his constitutional claims is 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 Showalter has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.* We grant Showalter's motion to place portions of the record (Volumes 2-6) on appeal under seal. We dispense with oral argument because the facts and legal

*Showalter also appeals the magistrate judge's order denying his motion for extension of time to note an appeal. Because the magistrate judge construed the motion as Showalter's notice of appeal, and the notice of appeal is deemed timely filed, we find no error.

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED