UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6914

VINCENT LEE FOREMAN,

Petitioner - Appellant,

versus

GENE M. JOHNSON, Director of the Virginia Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Jerome B. Friedman, District Judge. (CA-02-213)

Submitted: February 10, 2006 Decided: February 28, 2006

Before TRAXLER, GREGORY, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Vincent Lee Foreman, 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Unpublished opinions are not binding precedent in this circuit.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:

Vincent Lee Foreman seeks to appeal the district court's order denying his Fed. R. Civ. P. 60(b) motion and his motion to amend his original petition filed under 28 U.S.C. § 2254 (2000). The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000); Reid v. Angelone, 369 F.3d 363, 368-69, 374 n.7 (4th Cir. 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 ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (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 Foreman has not made the requisite showing. We therefore deny a certificate of appealability and dismiss the appeal.

Additionally, we construe Foreman's notice of appeal and informal brief on appeal as an application to file a second or successive habeas petition under 28 U.S.C. § 2254. See United States v. Winestock, 340 F.3d 200, 208 (4th Cir. 2003). Under 28 U.S.C. § 2244(b)(1) (2000), a motion for a second or successive

habeas corpus petition may not be granted for any claim that was presented in a prior application under § 2254. Because the claim Foreman raises has already been rejected by the district court in its ruling on his Fed. R. Civ. P. 59 motion, and by this court on appeal, Foreman v. Johnson, 107 Fed. App'x 333 (4th Cir. 2004), he fails to establish grounds for this court to authorize a successive § 2254 petition. Therefore, we decline to authorize a successive § 2254 petition. 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