

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7403

KEVIN WAYNE BERGLOWE,

Petitioner - Appellant,

versus

VIRGINIA DEPARTMENT OF CORRECTIONS, Director,

Respondent - Appellee.

Appeal from the United States District Court for the Western
District of Virginia, at Roanoke. Glen E. Conrad, District Judge.
(CA-05-69)

Submitted: January 13, 2006

Decided: January 27, 2006

Before LUTTIG, TRAXLER, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Kevin Wayne Berglowe, 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Unpublished opinions are not binding precedent in this circuit.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:

Kevin Wayne Berglowe seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2000) petition for failure to exhaust his state court remedies. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c) (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, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Berglowe has not demonstrated error in the district court's procedural ruling. Accordingly, we deny a certificate of appealability and dismiss the appeal. We further deny Berglowe's motion to proceed in forma pauperis on 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