

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6465

HENRY LEE SMELTZER,

Petitioner - Appellant,

versus

THEODIS BECK,

Respondent - Appellee.

Appeal from the United States District Court for the Middle
District of North Carolina, at Durham. Paul Trevor Sharp,
Magistrate Judge. (1:05-cv-00493-PTS)

Submitted: September 28, 2006

Decided: October 5, 2006

Before NIEMEYER, TRAXLER, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Henry Lee Smeltzer, Appellant Pro Se. Mary Carla Hollis, 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Unpublished opinions are not binding precedent in this circuit.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:

Henry Lee Smeltzer seeks to appeal the district court's order dismissing as untimely his 28 U.S.C. § 2254 (2000) petition. The order is not appealable 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 any assessment of the constitutional claims by the district court is debatable or wrong 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, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Smeltzer has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We deny Smeltzer's motion for a hearing en banc and 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