

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6646

ALVIN LEE GREGORY,

Petitioner - Appellant,

versus

MICHAEL V. COLEMAN, Acting Warden, Mount Olive
Correctional Complex,

Respondent - Appellee.

Appeal from the United States District Court for the Southern
District of West Virginia, at Beckley. David A. Faber, Chief
District Judge. (5:02-cv-00472)

Submitted: January 31, 2007

Decided: February 20, 2007

Before NIEMEYER, GREGORY, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Alvin Lee Gregory, Appellant Pro Se. Heather A. Connolly, OFFICE
OF THE ATTORNEY GENERAL, Charleston, West Virginia; Charles Patrick
Houdyschell, Jr., WEST VIRGINIA DIVISION OF CORRECTIONS,
Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Alvin Lee Gregory seeks to appeal the district court's order construing his petition filed pursuant to 28 U.S.C. § 2241 (2000) as a 28 U.S.C. § 2254 (2000) petition and dismissing it as untimely, and the court's orders denying reconsideration. The orders are 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, although the district court's procedural ruling is debatable,* Gregory has not demonstrated that the court's assessment of the constitutional

*Compare, e.g., White v. Lambert, 370 F.3d 1002, 1005 (9th Cir. 2004) ("adopt[ing] majority view that 28 U.S.C. § 2254 is the exclusive vehicle for a habeas petition by a state prisoner in custody pursuant to a state court judgment, even when the petitioner is not challenging his underlying state court conviction"), with Hamm v. Saffle, 300 F.3d 1213, 1216 (10th Cir. 2002) (approving of inmates proceeding under § 2241 to challenge execution of state court sentence).

claim is debatable or wrong. Accordingly, we deny a certificate of appealability and dismiss the 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