

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-7072

LARRY DARNELL SPEARS,

Petitioner - Appellant,

versus

DIRECTOR, DEPARTMENT OF CORRECTIONS; VIRGINIA
PAROLE BOARD,

Respondents - Appellees.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. T. S. Ellis III, Senior
District Judge. (1:07-cv-00596-TSE)

Submitted: October 18, 2007

Decided: October 26, 2007

Before WILKINSON, NIEMEYER, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Larry Darnell Spears, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry Darnell Spears seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2000) petition without prejudice based upon his failure to exhaust 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)(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 Spears has not made the requisite showing. 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