

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-7414

GLEN MONROE AUSTIN,

Petitioner - Appellant,

v.

JAMES HARDY, Superintendent,

Respondent - Appellee.

Appeal from the United States District Court for the Middle
District of North Carolina, at Durham. Wallace W. Dixon,
Magistrate Judge. (1:07-cv-00239-WWD)

Submitted: March 25, 2008

Decided: April 4, 2008

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Glen Monroe Austin, Appellant Pro Se. Clarence Joe DelForge, III,
Assistant Attorney General, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Glen Monroe Austin seeks to appeal the magistrate judge's order dismissing his 28 U.S.C. § 2254 (2000) petition as untimely.* 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 magistrate judge is debatable or wrong and that any dispositive procedural ruling by the magistrate judge 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 Austin has not made the requisite showing. Accordingly, we deny leave to proceed in forma pauperis, 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

*This case was decided by the magistrate judge upon consent of the parties under 28 U.S.C. § 636(c) (2000) and Fed. R. Civ. P. 73.