

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6356

DIANE FLEMING,

Petitioner - Appellant,

v.

GENE M. JOHNSON, Director of the Virginia Department of
Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Norfolk. Jerome B. Friedman, District
Judge. (2:07-cv-00194-JBF-FBS)

Submitted: September 22, 2008

Decided: October 9, 2008

Before NIEMEYER, MICHAEL, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David Bernard Hargett, HARGETT & WATSON, PLC, Glen Allen, Virginia,
for Appellant. Donald Eldridge Jeffrey, III, Assistant Attorney
General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Diane Fleming seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on her 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 Fleming 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