

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7884

MARTIN RAY BYLER,

Petitioner - Appellant,

v.

REGGIE WEISNER, Captain,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. Thomas David Schroeder, District Judge. (1:06-cv-00864-TDS-RAE)

Submitted: April 23, 2009

Decided: April 30, 2009

Before MICHAEL, GREGORY, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Thomas Hilton Johnson, Jr., GRAY JOHNSON BLACKMON LEE & LAWSON, LLP, Greensboro, North Carolina, for Appellant. Clarence Joe DelForge, III, Mary Carla Hollis, Assistant Attorneys General, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Martin Ray Byler seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2006) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006). 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) (2006). 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 Byler has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We deny Byler's motion for bail pending 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