

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 09-6927**

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DONALD WIMBUSH,

Petitioner - Appellant,

v.

LEROY CARTLEGE, Warden of McCormick Correctional  
Institution,

Respondent - Appellee.

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Appeal from the United States District Court for the District of  
South Carolina, at Beaufort. David C. Norton, District Judge.  
(9:08-cv-03067-DCN)

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Submitted: August 20, 2009

Decided: August 27, 2009

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Before WILKINSON and MICHAEL, Circuit Judges, and HAMILTON,  
Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Donald Wimbush, Appellant Pro Se. Donald John Zelenka, Deputy  
Assistant Attorney General, Samuel Creighton Waters, Assistant  
Attorney General, Columbia, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Donald Wimbush seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing as untimely 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 Wimbush 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