

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7533

JOHNNIE GATHERS,

Petitioner - Appellant,

v.

WILLIE EAGLETON, Warden, Evans Correctional Institution;
HENRY DARGAN MCMASTER,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Beaufort. Henry M. Herlong, Jr., Senior
District Judge. (9:08-cv-03987-HMH)

Submitted: October 15, 2009

Decided: October 22, 2009

Before SHEDD, DUNCAN, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Johnnie Gathers, Appellant Pro Se. Roy F. Laney, Heath McAlvin
Stewart, III, RILEY, POPE & LANEY, LLC, Columbia, South
Carolina; Donald John Zelenka, Deputy Assistant Attorney
General, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Johnnie Gathers, a state prisoner, seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2241 (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 Gathers has not made the requisite showing. Accordingly, we deny Gathers' motion for release, 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