

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7903

GREG GAINES,

Petitioner - Appellant,

v.

STATE OF SOUTH CAROLINA; WARDEN, TYGER RIVER CORRECTIONAL
INSTITUTION,

Respondents - Appellees.

No. 09-8196

GREG GAINES,

Petitioner - Appellant,

v.

STATE OF SOUTH CAROLINA; WARDEN, TYGER RIVER CORRECTIONAL
INSTITUTION,

Respondents - Appellees.

Appeals from the United States District Court for the District
of South Carolina, at Rock Hill. R. Bryan Harwell, District
Judge. (0:08-cv-00530-RBH)

Submitted: July 28, 2010

Decided: September 20, 2010

Before DUNCAN and AGEE, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Dismissed by unpublished per curiam opinion.

Greg Gaines, Appellant Pro Se. Donald John Zelenka, Deputy
Assistant Attorney General, Melody Jane Brown, Assistant
Attorney General, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In appeal No. 09-7903, Greg Gaines seeks to appeal the district court's order adopting the magistrate judge's report and recommendation and denying relief on his 28 U.S.C. § 2254 (2006) petition. In appeal No. 09-8196, Gaines seeks to appeal the district court's subsequent order granting reconsideration, but again adopting the magistrate judge's report and recommendation and denying relief.

In appeal No. 09-7903, the district court's order was nullified by the court's subsequent order, that granted Gaines' motion for reconsideration and re-evaluated the magistrate judge's report and recommendation in light of Gaines' objections. Thus, this appeal is moot. See Friedman's, Inc. v. Dunlap, 290 F.3d 191, 197 (4th Cir. 2002) ("When circumstances change from the time the suit is filed to the time of appeal, so that the appellate court can no longer serve the intended harm-preventing function or has no effective relief to offer, the controversy is no longer live and must be dismissed as moot.") (quoting Cnty. Motors, Inc. v. Gen. Motors Corp., 278 F.3d 40, 43 (1st Cir. 2002)). Accordingly, we deny Gaines' motion for a certificate of appealability in No. 09-7903 and dismiss that appeal.

In appeal No. 09-8196, the order is not appealable unless a circuit justice or judge issues a certificate of appealability. See 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). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85. We have independently reviewed the record and conclude that Gaines has not made the requisite showing. Accordingly, we deny a certificate of appealability in No. 09-8196 and dismiss that 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