

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6178

MICHAEL ELLERY TORY, SR.,

Petitioner - Appellant,

versus

JACK LEE, Warden, Keen Mountain Correctional
Center,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Richmond. David G. Lowe, Magistrate
Judge. (CA-03-178-3)

Submitted: June 18, 2004

Decided: August 17, 2004

Before WILKINSON, TRAXLER, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Michael Ellery Tory, Sr., Appellant Pro Se. John H. McLees, Jr.,
OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Michael Ellery Tory, Sr., appeals from the denial of his 28 U.S.C. § 2254 (2000) petition by the magistrate judge. An appeal may not be taken to this court from the final order in a § 2254 proceeding 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 jurists of reason would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001).

We have reviewed the record and conclude that Tory has not made the requisite showing. We therefore 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