

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6516

SHAWN DELANO GREGORY,

Petitioner - Appellant,

v.

KATHLEEN BASSETT, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, Magistrate Judge. (3:07-cv-00790-MHL)

Submitted: August 31, 2009

Decided: November 23, 2009

Before WILKINSON, MOTZ, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Susan L. Ferguson, Burbank, California, for Appellant. Alice Theresa Armstrong, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Shawn Delano Gregory seeks to appeal the magistrate judge's¹ order 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. 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). 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. See 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 Gregory has not made the requisite showing.² Accordingly, we

¹ The parties consented to have the matter conducted by a magistrate judge, pursuant to 28 U.S.C. § 636(c) (2006) and Fed. R. Civ. P. 73.

² In reaching the conclusion that Gregory has not met the standard of issuance of a certificate of appealability, we have carefully evaluated both the magistrate judge's primary conclusion that Gregory's § 2254 petition was untimely and the alternative finding that Gregory's Fourth Amendment rights were not violated by the search of his residence. We conclude that (Continued)

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

reasonable jurists would not find either holding to be debatable or wrong.