

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-8050

IRVIN VERNON MASON,

Petitioner - Appellant,

v.

JON OZMINT, Director; WILLIE EAGLETON, Warden,

Respondents - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Margaret B. Seymour, District Judge. (3:09-cv-00841-MBS)

Submitted: January 14, 2010

Decided: January 22, 2010

Before MOTZ, GREGORY, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Irvin Vernon Mason, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Irvin Vernon Mason seeks to appeal the district court's order accepting the recommendation of the magistrate judge, construing his 28 U.S.C. § 2241 (2006) motion as a successive 28 U.S.C. § 2254 (2006) petition, and dismissing it as successive. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006); Reid v. Angelone, 369 F.3d 363, 369 (4th Cir. 2004). 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 regardless of whether Mason's petition should have been treated as a § 2241 or § 2254 petition, the claim he sought to raise was successive, and is thus precluded by 28 U.S.C. § 2244(a) (2006). 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