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Robert A. Stanback,

Petitioner Se

#0386901

601 N. Third St.

Bayboro, NC 28515

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-6597

ROBERT ANTWAIN STANBACK,

Petitioner - Appellant,

v.

FAYE DANIELS,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Joe L. Webster, Magistrate Judge. (1:16-cv-01301-CCE-JLW)

Submitted: July 27, 2017

Decided: August 1, 2017

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

Dismissed by unpublished per curiam opinion.

Robert Antwain Stanback, Appellant Pro Se. Clarence Joe DelForge, III, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ROBERT ANTWAIN STANBACK,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:16CV1301
	)	
FAYE DANIELS,	)	
	)	
Respondent.	)	

ORDER

The Order and Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on April 11, 2017, was served on the parties in this action. Doc. 12. The petitioner objected to the Recommendation. Doc. 14. He also filed a request for a certificate of appealability. Doc. 15.

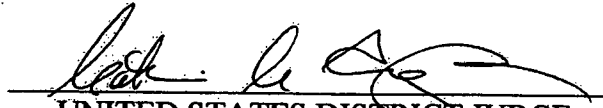
The Court has reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. With one exception noted *infra*, the court adopts the Magistrate Judge's recommendation.

To the extent the Magistrate Judge's Recommendation can be read to hold as a matter of law that in every case the state satisfies its constitutional obligations to prisoners seeking post-conviction relief through NCPLS, the Court does not adopt that broad holding. The record is clear that in this case the petitioner had adequate access to legal materials and assistance, see Doc. 10 at 9 (referencing in his brief access to "law books" and "prison legal services"), and any broader holding is unnecessary.

The petitioner has asked for a certificate of appealability. Such certificates are only issued upon a finding that there is a substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, or a debatable procedural ruling. *See* 28 U.S.C. § 2253(c)(2). Here, the petitioner's conviction was over a decade old when he began the post-conviction process, and there is no substantial issue or debatable procedural ruling as to its timeliness. Therefore, the Court denies a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2).

IT IS THEREFORE ORDERED AND ADJUDGED that Respondent's motion to dismiss, Doc. 5, is **GRANTED**, the Petition, Doc. 1, is **DISMISSED**, and the request for a certificate of appealability, Doc. 15, is **DENIED**. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 17th day of May, 2017.


UNITED STATES DISTRICT JUDGE

FILED: September 1, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6597
(1:16-cv-01301-CCE-JLW)

ROBERT ANTWAIN STANBACK

Petitioner - Appellant

v.

FAYE DANIELS

Respondent - Appellee

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Floyd and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT ANTWAIN STANBACK PETITIONER
(Your Name)

VS.

FAYE DANIELS — RESPONDENT(S)

PROOF OF SERVICE

I, Robert Antwain Stanback, do swear or declare that on this date, 1 November, 2017, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Clarence J. DeForge III
P.O. BOX 629
Raleigh, N.C. 27602

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 1 November, 2017

Robert A. Stanback
(Signature)

**Additional material
from this filing is
available in the
Clerk's Office.**