

ON PETITION FOR REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-6206

THOMAS R. MORKE,

Plaintiff - Appellant,

versus

DAVID A. GARRAGHTY, Warden, Greensville Cor-
rectional Center,

Defendant - Appellee.

Appeal from the United States District Court for the Western Dis-
trict of Virginia, at Roanoke. Samuel G. Wilson, Chief District
Judge. (CA-99-45-7)

Submitted: November 20, 2000

Decided: December 4, 2000

Before WILKINS and MOTZ, Circuit Judges, and HAMILTON, Senior Cir-
cuit Judge.

Dismissed by unpublished per curiam opinion.

Thomas R. Morke, Appellant Pro Se. Thomas Drummond Bagwell, Assis-
tant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Thoms R. Morke petitions for rehearing the panel's decision dismissing his appeal of the district court's denial of his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 2000), and a subsequent order denying relief on his motion filed pursuant to Fed. R. Civ. P. 59(e). Because the panel's opinion incorrectly states that Morke's Rule 59(e) motion was not timely filed, we grant Morke's rehearing petition.

Because Morke's Rule 59(e) motion was filed within ten days of the district court's order dismissing his § 2254 petition, his appeal of the underlying order dismissing his § 2254 petition was properly before the court. See Dove v. CODESCO, 569 F.2d 807, 809-10 (4th Cir. 1978) (holding that timely appeal of order regarding Rule 59 motion brings both Rule 59 order and underlying order before appeals court). We have thus reviewed the district court's order dismissing Morke's § 2254 petition as untimely and its subsequent order denying Morke's Rule 59(e) motion, and find no reversible error.

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 because argument would not aid the decisional process.

DISMISSED