

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

SHERRELL GARY BRINKLEY,

Petitioner-Appellant.

v.

No. 00-6369

P. PITZER, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Western District of North Carolina, at Charlotte.
Robert D. Potter, Senior District Judge.
(CA-98-1893, CA-99-54)

Submitted: July 20, 2000

Decided: August 9, 2000

Before WILKINS, WILLIAMS, and MICHAEL, Circuit Judges.

Dismissed by unpublished per curiam opinion.

COUNSEL

Sherrell Gary Brinkley, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Sherrell Gary Brinkley seeks to appeal an order of the district court dismissing an action construed as a motion under 28 U.S.C.A. § 2255 (West Supp. 2000). He asks that the decision of the district court be vacated and the case remanded with instructions to transfer the matter to the United States District Court for the Eastern District of Texas, where it was initially filed, for consideration as a petition under 28 U.S.C. § 2241 (1994).

This case was transferred to the Western District of North Carolina from the Eastern District of Texas. The transfer order is not reviewable. See Linnell v. Sloan, 636 F.2d 65, 67 (4th Cir. 1980). Further, as every court to consider this case has concluded, Brinkley's challenge to his sentence was properly construed as a motion under 28 U.S.C.A. § 2255. See Swain v. Pressley, 430 U.S. 372, 381 (1977); see also In re Vial, 115 F.3d 1192, 1194 n.4 (4th Cir. 1997); cf. Hooker v. Sivley, 187 F.3d 680, 681-82 (5th Cir. 1999). Because the motion was successive, and because Brinkley did not obtain permission to file a successive petition, the district court properly dismissed the motion. See 28 U.S.C.A. § 2244, 2255 (West 1994 & Supp. 2000).

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 significantly aid the decisional process.

DISMISSED