

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-7543

JAMAL A. AZEEZ,

Petitioner - Appellant,

versus

PAUL KIRBY, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. David A. Faber, District Judge. (CA-98-523-5)

Submitted: April 30, 2002

Decided: May 15, 2002

Before NIEMEYER and MICHAEL, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Jamal A. Azeez, Appellant Pro Se. Scott E. Johnson, Dawn Ellen Warfield, OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jamal A. Azeez seeks to appeal the district court's orders denying relief on his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 2001), and denying his motion to alter or amend judgment. We have reviewed the record, the district court's opinion accepting the recommendation of the magistrate judge, and the district court's order denying post judgment relief, and find no reversible error. Accordingly, we deny a certificate of appealability and dismiss the appeal on the reasoning of the district court.* See Azeez v. Kirby, No. CA-98-523-5 (S.D.W. Va. Sept. 28, 2000; Dec. 21, 2001). We deny Azeez's motions for appointment of counsel and his motions to remand and to file a formal brief. 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

* We note that the district court should have considered the post judgment motion as under Fed. R. Civ. P. 59(e), rather than Fed. R. Civ. P. 60(b), because the motion was executed within ten days of the entry of judgment. See Dove v. CODESCO, 569 F.2d 807, 809 (4th Cir. 1978). We find, however, that relief was properly denied. See Collison v. International Chem. Workers Union, 34 F.3d 233, 236 (4th Cir. 1994).