

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7084

THADDEUS SWINDLER,

Petitioner - Appellant,

versus

MARTIN MCDADE,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. Russell A. Eliason, Magistrate Judge. (CA-01-18-1)

Submitted: October 17, 2001

Decided: November 7, 2001

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

Dismissed by unpublished per curiam opinion.

Thaddeus Swindler, Appellant Pro Se. Clarence Joe DelForge, III, OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Thaddeus Swindler, III, seeks to appeal the magistrate judge's orders denying his 28 U.S.C.A. § 2254 (West 1994 & Supp. 2001) petition and his motions to reconsider that order. Although Swindler's § 2254 petition was untimely, the magistrate judge denied relief on the merits. Because Swindler filed his § 2254 petition beyond the AEDPA's one-year limitations period, we deny a certificate of appealability and dismiss the appeal on modified grounds that Swindler's § 2254 petition was untimely. See 28 U.S.C.A. §§ 2244(d)(1) (West Supp. 2001). 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