

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7133

DAVID ALAN LEARY, JR.,

Petitioner - Appellant,

versus

DAVID GARRAGHTY, Chief Warden, Greensville
Correctional Center,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. James C. Cacheris, Senior
District Judge. (CA-00-1657-AM)

Submitted: October 10, 2001

Decided: October 23, 2001

Before WIDENER, WILKINS, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David Alan Leary, Jr., Appellant Pro Se. Thomas Drummond Bagwell,
Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

David Alan Leary, Jr., seeks to appeal the district court's order denying relief on his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 2001). We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we deny a certificate of appealability and dismiss the appeal substantially on the reasoning of the district court.* See Leary v. Garraghty, No. CA-00-1657-AM (E.D. Va. June 8, 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

* We note that in Beck v. Alabama, 447 U.S. 625, 638 n.14 (1980), the Supreme Court declined to decide whether due process requires lesser included instructions in non-capital state trials. Thus, Leary cannot meet the requirements of § 2254(d)(1).