

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7636

DWAYNE MITCHELL,

Petitioner - Appellant,

versus

BRIAN A. BLEDSOE, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Irene M. Keeley, Chief District Judge. (CA-01-112)

Submitted: January 31, 2002

Decided: February 8, 2002

Before NIEMEYER, WILLIAMS, and MICHAEL, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Dwayne Mitchell, Appellant Pro Se. Rita R. Valdrini, Assistant United States Attorney, Wheeling, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Dwayne Mitchell seeks to appeal from the district court's order construing his motion filed under 28 U.S.C.A. § 2241 (West 1994) as one pursuant to 28 U.S.C.A. § 2255 (West Supp. 2001) and denying it. Although Mitchell's § 2255 motion was successive, the district court did not dismiss it on that basis. Because Mitchell did not obtain authorization from this court to file his successive § 2255 motion in the district court, the district court lacked authority to consider it. See 28 U.S.C.A. § 2244(b)(3) (West 1994 & Supp. 2001). 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 aid the decisional process.

DISMISSED