

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7710

DAVID LAWRENCE DIXON,

Petitioner - Appellant,

versus

HOWARD H. PAINTER, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Southern District of West Virginia, at Bluefield. David A. Faber, District Judge. (CA-99-0964-1)

Submitted: November 29, 2001

Decided: December 10, 2001

Before WIDENER, NIEMEYER, and WILLIAMS, Circuit Judges.

Dismissed as modified by unpublished per curiam opinion.

David Lawrence Dixon, Appellant Pro Se. 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Unpublished opinions are not binding precedent in this circuit.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:

David Lawrence Dixon appeals the district court's order denying relief on his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 2001) because some of Dixon's claims were not exhausted in state court. We have reviewed the record and the district court's opinion accepting the recommendation of the magistrate judge and find no reversible error. However, we modify the district court's order to reflect dismissal without prejudice to Dixon's ability to refile after he exhausts state remedies. See Evans v. Smith, 220 F.3d 306, 324-25 (4th Cir. 2000). Accordingly, we deny a certificate of appealability and dismiss the appeal as so modified. 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 AS MODIFIED