

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 01-8104**

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DONNIE J. BEST,

Petitioner - Appellant,

versus

STEVE HAYDEN; JASON DARAK; KEITH PENDERGRASS,

Respondents - Appellees.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, Chief District Judge. (CA-01-813-5-HC-BO)

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Submitted: March 20, 2002

Decided: April 1, 2002

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Before WIDENER, NIEMEYER, and WILLIAMS, Circuit Judges.

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Dismissed in part and affirmed in part by unpublished per curiam opinion.

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Donnie J. Best, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Donnie J. Best appeals the district court's order denying relief on his petition filed under 28 U.S.C. § 2241 (1994). To the extent that Best claimed that officers used excessive force during an arrest, the district court correctly dismissed that claim without prejudice to Best's right to raise the claim in a 42 U.S.C.A. § 1983 (West Supp. 2001) action. We affirm that part of the district court's order. The district court also properly dismissed Best's challenge to his conviction without prejudice to his right to raise that challenge in a 28 U.S.C.A. § 2254 (West 1994 & Supp. 2001) petition once state remedies are exhausted. We therefore dismiss Best's appeal from that part of the district court's order.

Accordingly, we deny a certificate of appealability and dismiss the appeal in part and affirm in part on the reasoning of the district court. See Best v. Hayden, No. CA-01-813-5-HC-BO (E.D.N.C. Oct. 25, 2001). We deny the motion to stay the case until Best can file an additional brief and 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. The motion for appointment of counsel is denied.

DISMISSED IN PART; AFFIRMED IN PART