

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

WAYNE RALPH MARSHALL,
Petitioner-Appellant,

v.

SCOTT C. VACHRIS, Assistant
Commonwealth Attorney;
MISHELENE N. MINOT,
Commonwealth Witness; PAGE
TRUE,

Respondents-Appellees.

No. 02-7802

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
Gerald Bruce Lee, District Judge.
(CA-02-816)

Submitted: April 29, 2003

Decided: May 16, 2003

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Remanded by unpublished per curiam opinion.

COUNSEL

Wayne Ralph Marshall, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Wayne Ralph Marshall seeks to appeal the district court's order construing his 42 U.S.C. § 1983 (2000) complaint as a petition filed under 28 U.S.C. § 2254 (2000), and dismissing it without prejudice. After the district court dismissed Marshall's petition for failure to supply the court with requested information, Marshall filed a letter on November 13, 2002, tending to show that he had responded to the court's request. On November 19, 2002, Marshall filed a timely notice of appeal. The district court considered Marshall's letter as a motion pursuant to Fed. R. Civ. P. 60(b) and issued an order on December 16, 2002, indicating its inclination to grant Marshall's post-judgment motion. *See Fobian v. Storage Tech. Corp.*, 164 F.3d 887, 891 (4th Cir. 1999). Accordingly, we remand for the limited purpose of consideration on the merits Marshall's motion for reconsideration pursuant to Federal Rule of Civil Procedure 60(b). *See id.* at 892. In so doing, we express no opinion on the merits of the motion. *See id.* 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.

REMANDED