

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7836

JACOB ISRAEL, a/k/a John Langowski,

Petitioner - Appellant,

versus

DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Samuel G. Wilson, Chief District Judge. (CA-02-497-7)

Submitted: February 25, 2003

Decided: March 12, 2003

Before WIDENER and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

Jacob Israel, Appellant Pro Se. Richard Carson Vorhis, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jacob Israel appeals the district court's order denying relief under 28 U.S.C. § 2254 (2000) on his claim alleging the Virginia Department of Corrections improperly classified him as ineligible for parole under Virginia Code § 53.1-151(B1). Israel initially filed his complaint under 42 U.S.C. § 1983 (2000). The district court dismissed without prejudice and required that Israel file his claim pursuant to 28 U.S.C. § 2254. Because Israel does not seek release from custody, but rather seeks only a determination that he should not have been classified as ineligible for parole, Israel's claim was properly brought under § 1983. See Strader v. Troy, 571 F.2d 1263, 1269 (4th Cir. 1978). The district court, however, properly determined Israel's claims were without merit because he has the requisite prior felony convictions to be classified as parole ineligible under Virginia law. We therefore affirm substantially on the reasoning of the district court but modify to reflect dismissal under § 1983 rather than § 2254. 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.

AFFIRMED AS MODIFIED