

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 03-1895

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LADYBIRD POWELL,

Petitioner - Appellant,

versus

BOB OGLE, Sheriff of Swain County, North  
Carolina; EASTERN BAND OF CHEROKEE INDIANS,  
INCORPORATED; KIRK SAUNOOKE, Additional  
respondents,

Respondents - Appellees.

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Appeal from the United States District Court for the Western  
District of North Carolina, at Asheville. Lacy H. Thornburg,  
District Judge. (CA-03-168-2)

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Submitted: December 24, 2003

Decided: March 26, 2004

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Before LUTTIG, MOTZ, and KING, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Russell L. McLean, III, MCLEAN LAW FIRM, P.A., Waynesville, North  
Carolina, for Appellant. David L. Nash, Attorney General,  
Cherokee, North Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Ladybird Powell seeks to appeal the district court's orders denying relief on her petition for a writ of habeas corpus. Powell filed her petition under 28 U.S.C. § 2254 (2000). However, because she was convicted by a Cherokee Tribal Court and not a state court, we find that the proper jurisdictional basis for her habeas corpus application is 28 U.S.C. § 2241 (2000). Therefore, a certificate of appealability is not required. 28 U.S.C.A. § 2253(c)(1) (2000). Accordingly, we deny as unnecessary Powell's motion for a certificate of appealability.

We have reviewed the record and the district court's opinions and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Powell v. Ogle, No. CA-03-168-2 (W.D.N.C. July 9, 2003). Although we grant the Appellees' motions to file additional material, we deny their motions to dismiss and for damages and costs. 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