

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-7601**

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JAMES B. SKIPWITH,

Petitioner - Appellant,

versus

VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Henry Coke Morgan, Jr., Senior District Judge. (CA-04-463-2)

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Submitted: April 28, 2005

Decided: May 3, 2005

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Before WILLIAMS, KING, and DUNCAN, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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James B. Skipwith, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

James B. Skipwith noted this appeal from the district court's order dismissing his 28 U.S.C. § 2254 (2000) petition without prejudice for failure to exhaust state remedies. Skipwith has filed a notice that he wishes to withdraw his appeal as to the habeas claims, but pursue his claims under 42 U.S.C. § 1983 (2000). Because Skipwith did not assert any claims for relief under § 1983 in the district court, this court cannot consider such claims. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993) (noting that issue raised for first time on appeal generally are not considered absent exceptional circumstances). Moreover, because his conviction has not been invalidated or otherwise called into question, Skipwith's § 1983 claims are not cognizable. See Heck v. Humphrey, 512 U.S. 477 (1994).

In light of Skipwith's withdrawal of his challenge to the district court's order, we deny a certificate of appealability, see 28 U.S.C. § 2253(c) (2000); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003), and dismiss the appeal. 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