

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7627

HARRY E. WALKUP, JR.,

Petitioner - Appellant,

versus

WILLIAM HAINES, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Southern
District of West Virginia, at Beckley. David A. Faber, Chief
District Judge. (CA-04-1283)

Submitted: February 23, 2006

Decided: March 3, 2006

Before WIDENER, NIEMEYER, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Harry E. Walkup, Jr., Appellant Pro Se. Dawn Ellen Warfield,
OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West
Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Harry E. Walkup, Jr., filed a 28 U.S.C. § 2254 (2000) petition challenging his West Virginia state court convictions. He seeks to appeal the district court's order adopting the magistrate judge's recommendation and denying Walkup's motion to excuse exhaustion of state court remedies, granting Respondent's motion to dismiss with respect to Walkup's motion to excuse exhaustion, and giving Walkup twenty days to file an amended § 2254 petition containing only exhausted claims or to withdraw his § 2254 petition in its entirety.* This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2000), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2000); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). The order Walkup seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we dismiss the appeal for lack of jurisdiction. 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

*The district court entered its order on September 30, 2005. Walkup has neither filed an amended § 2254 petition nor withdrawn his § 2254 petition, and no final order has been issued.