

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 08-1395**

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DOUGLAS ALLEN RIVENBARK,

Petitioner - Appellant,

v.

COMMONWEALTH OF VIRGINIA; ROBERT F. MCDONALD, Esquire,  
Attorney General,

Respondents - Appellees.

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Appeal from the United States District Court for the Eastern  
District of Virginia, at Richmond. Henry E. Hudson, District  
Judge. (3:07-cv-00676-HEH)

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Submitted: November 18, 2008

Decided: December 30, 2008

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Before NIEMEYER, TRAXLER, and GREGORY, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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Douglas Allen Rivenbark, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Douglas Allen Rivenbark appeals the district court's order dismissing his self-styled "Petition for Writ of Mandamus," which the district court construed as a mandamus petition under 28 U.S.C. § 1651 (2000). After conducting its 28 U.S.C. §§ 1915(e)(2) and 1915(A) screening, the district court recognized that Rivenbark sought a writ of mandamus directing the Commonwealth of Virginia "to order his release from incarceration and vacate his state convictions," but found that it lacked jurisdiction to grant mandamus relief against state officials and dismissed Rivenbark's petition.

Given the nature of the relief sought by Rivenbark, we find that the district court should have construed Rivenbark's petition as a 28 U.S.C. § 2254 (2000) petition.\* Accordingly, we grant Rivenbark's application to proceed in forma pauperis and vacate and remand the district court's order for further proceedings. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials

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\* We note that before characterizing Rivenbark's filing as a § 2254 petition, the district court must provide Rivenbark with the proper notice and an opportunity to respond as required by Castro v. United States, 540 U.S. 375, 377 (2003). See United States v. Blackstock, 513 F.3d 128, 132-35 (4th Cir. 2008).

before the court and argument would not aid the decisional process.

VACATED AND REMANDED