

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 09-7094**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH D. BEVERLY,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:09-cv-00065-HEH)

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Submitted: January 26, 2010

Decided: February 16, 2010

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Before MOTZ, KING, and DUNCAN, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Kenneth D. Beverly, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenneth D. Beverly appeals from the district court's order dismissing without prejudice his motion for return of property for failure to pay the initial partial filing fee. In the only claim raised on appeal, Beverly asserts that his motion was filed pursuant to 28 U.S.C.A. § 2255 (West Supp. 2009) and, thus, not subject to a filing fee. A review of the record discloses that Beverly's motion did not reference § 2255. Moreover, a motion for return of property is a civil action subject to a filing fee. See United States v. Garcia, 65 F.3d 17, 18 n.2 (4th Cir. 1995); United States v. Howell, 354 F.3d 693, 695 (7th Cir. 2004). Accordingly, we affirm the judgment of the district court. We deny Beverly's motions to place the case in abeyance. 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