

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 09-8139**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DANIEL WATLINGTON, a/k/a Gator Slim,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Fox, Senior District Judge. (5:05-cr-00004-F-1)

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Submitted: June 1, 2010

Decided: June 7, 2010

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Before GREGORY, SHEDD, and KEENAN, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Daniel Watlington, Appellant Pro Se. Anne Margaret Hayes, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Daniel Watlington appeals the district court's order denying his motion for disqualification of the district court judge who presided over his criminal trial from presiding over the 28 U.S.C.A. § 2255 (West Supp. 2009) motion Watlington planned to file. The district court denied the motion on the merits. Because Watlington had not yet filed his § 2255 motion, however, the disqualification motion was premature. Industry Network Sys., Inc. v. Armstrong World Indus., Inc., 54 F.3d 150, 156 (3d Cir. 1995). We therefore affirm as modified to reflect that the dismissal is without prejudice because the motion was not ripe for review. 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