

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6546

EUNICE HUSBAND,

Plaintiff - Appellant,

v.

J.C. RAFFERTY; UNITED STATES MARSHALS, Northern District of
West Virginia,

Defendants - Appellees.

Appeal from the United States District Court for the Northern
District of West Virginia, at Elkins. John Preston Bailey,
Chief District Judge. (2:09-cv-00106-REM-DJJ)

Submitted: February 10, 2011

Decided: February 17, 2011

Before WILKINSON and DAVIS, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

Eunice Husband, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eunice Husband appeals the district court's order adopting the magistrate judge's recommendation and dismissing his civil rights complaint filed pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). We have reviewed the record and the district court's opinions and find no reversible error. As the district court held, Husband's claim is not cognizable because the federal conviction at issue has not been reversed, expunged, declared invalid. See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (concerning 42 U.S.C. § 1983 (2006) (complaint)). Because Husband may refile his claims should his conviction ever be overturned or called into question by the appropriate court, we modify the dismissal to be without prejudice and affirm as modified. 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 AS MODIFIED