

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-7374

MACK WAYNE PETERSON,

Petitioner - Appellant,

versus

NORTH CAROLINA DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (CA-94-979-5-BO)

Submitted: March 21, 1996

Decided: April 4, 1996

Before NIEMEYER and MICHAEL, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

Mack Wayne Peterson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant appeals from the district court's order denying relief on his 28 U.S.C. § 2254 (1988) petition. The district court dismissed the petition as frivolous. Because Appellant has not exhausted his claims in state court, we grant a certificate of probable cause to appeal and modify the dismissal in this case, pursuant to our authority under 28 U.S.C. § 2106 (1988), to reflect that the petition is dismissed without prejudice due to Appellant's failure to exhaust. 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