

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-7087

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TOMMY STANLEY HERBERT,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, District Judge. (CR-93-77-A, CA-95-746-AM)

Submitted: January 9, 1997

Decided: January 23, 1997

Before HALL and MICHAEL, Circuit Judges, and PHILLIPS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Tommy Stanley Herbert, Appellant Pro Se. Lawrence Joseph Leiser, Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Tommy Stanley Herbert seeks to appeal the district court's order denying his motion filed under 28 U.S.C. § 2255 (1994), amended by Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we deny a certificate of appealability and dismiss the appeal on the reasoning of the district court. United States v. Herbert, Nos. CR-93-77-A; CA-95-746-AM (E.D. Va. May 21, 1996). To the extent that Appellant has appealed the district court's denial of his petition for a writ of mandamus seeking to compel the district court to expedite consideration of his motion under 28 U.S.C. § 2255, we dismiss the appeal as moot as the record reflects that the district court has issued a final order from which Appellant has noted a timely appeal. 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.

DISMISSED