

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 97-6623**

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ROBERT LEE DAVIS,

Plaintiff - Appellant,

versus

MALCOLM J. HOWARD,

Defendant - Appellee.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Fox, Chief District Judge. (CA-97-43-7-F1)

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Submitted: August 14, 1997

Decided: August 25, 1997

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

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Dismissed by unpublished per curiam opinion.

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Robert Lee Davis, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant appeals the district court's order denying his motion to reconsider the dismissal of his 42 U.S.C. § 1983 (1994) complaint\* and denying his motion to recuse. We have reviewed the record and the district court's opinion and find that this appeal is frivolous. Accordingly, we dismiss the appeal on the reasoning of the district court. Davis v. Howard, No. CA-97-43-7-F1 (E.D.N.C. Apr. 17, 1997). We deny Appellant's motion to stay and 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

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\* As noted by the district court, although the action was brought under 42 U.S.C. § 1983, it should have been brought under Bivens v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).