

Opinion on Rehearing

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 97-7301**

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EDDIE JAMES SMITH,

Petitioner - Appellant,

versus

ARNOLD SMITH; SHELLY SVEDA; OFFICER LONG;  
JEFFREY LEIN; CLATTY OFFICER; ANDRE TYSON;  
WILLIAM R. SHELL,

Respondents - Appellees.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, District Judge. (CA-97-453-5-H)

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Submitted: February 27, 1998

Decided: May 27, 1998

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Before WILKINS, NIEMEYER, and HAMILTON, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Eddie James Smith, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant seeks to appeal the district court's order dismissing without prejudice his second 28 U.S.C.A. § 2254 (West 1994 & Supp. 1997) petition for failure to obtain authorization pursuant to 28 U.S.C.A. § 2244 (West Supp. 1997). Initially, this court dismissed the appeal as untimely. We now grant Appellant's petition for rehearing and address the case on the merits. 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. Smith v. Smith, No. CA-97-453-5-H (E.D.N.C. July 11, 1997). 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