

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-6981

WILLIAM ELWOOD WELLER, JR.,

Petitioner - Appellant,

versus

RONALD ANGELONE, Director, Department of
Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert R. Merhige, Jr., Senior District Judge. (CA-97-241)

Submitted: November 10, 1998

Decided: December 21, 1998

Before HAMILTON and MOTZ, Circuit Judges, and HALL, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Randolph Daniel Stowe, RANDOLPH D. STOWE, P.C., Norfolk, Virginia, for Appellant. Michael Thomas Judge, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant appeals the district court's order denying relief on his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 1998). We have reviewed the record and the district court's opinion and find no reversible error. To the extent that Weller challenges the exclusion on due process grounds of evidence allegedly tending to show the guilt of other individuals, we note that, even though Weller failed to present the claim in this form before the Virginia Court of Appeals, because the Virginia Supreme Court did not rely on this procedural bar in its decision, Weller is not barred from asserting this claim in a federal habeas petition. See Coleman v. Thompson, 501 U.S. 722 (1991). However, much of this evidence was hearsay, and the remainder was irrelevant.

To the extent that Weller challenges on federal due process grounds the state court's refusal to permit the defense to call a witness as adverse and the state court's exclusion of certain testimony, Weller failed to properly exhaust these claims, see Matthews v. Evatt, 105 F.3d 907, 911 (4th Cir. 1997), and would be procedurally barred from raising the claims now in a second state habeas petition. See Va. Code Ann. § 8.01-654(B)(2) (Michie 1992 & Supp. 1998); Bassette v. Thompson, 915 F.2d 932, 936-37 (4th Cir. 1991). Accordingly, we deny a certificate of appealability and dismiss the appeal substantially on the reasoning of the district court. See Weller v. Angelone, No. CA-97-241 (E.D. Va. June 4,

1998). We dispense with oral argument because the facts and legal contentions are adequately set forth in the materials before the court and argument would not aid the decisional process.

DISMISSED