

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

RICKY NESBIT,  
Plaintiff-Appellant.

v.

MAXINE WASHINGTON; JOHN WILLIAM

No. 99-6795

WADE, JR.; JOHN P. ALDERMAN, in  
their individual and official  
capacities,  
Defendants-Appellees.

Appeal from the United States District Court  
for the Eastern District of Virginia, at Alexandria.  
James C. Cacheris, Senior District Judge.  
(CA-99-537-AM)

Submitted: August 31, 1999

Decided: October 21, 1999

Before HAMILTON and WILLIAMS, Circuit Judges,  
and PHILLIPS, Senior Circuit Judge.

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Vacated and remanded by unpublished per curiam opinion.

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**COUNSEL**

Ricky Nesbit, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

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## OPINION

### PER CURIAM:

Appellant, Ricky Nesbit, appeals the district court's order dismissing without prejudice his 42 U.S.C.A. § 1983 (West Supp. 1999) complaint. After reviewing the record and the district court's opinion, we vacate and remand for further consideration.

Although Nesbit styled his action as one arising under § 1983, the district court concluded that Nesbit sought relief available only under 28 U.S.C.A. § 2254 (West 1994 & Supp. 1999). The district court thereupon dismissed the action without prejudice because Nesbit had not exhausted the appropriate remedies available to him in state court. After reviewing the record, we find that Nesbit properly filed his complaint as a § 1983 action because he challenged the method of decision making used by the parole board, not the board's denial of relief to him. See Strader v. Troy, 571 F.2d 1263, 1269 (4th Cir. 1978); see also Roller v. Cavanaugh, 984 F.2d 120, 122 (4th Cir. 1993). Accordingly, we vacate the judgment of the district court and remand for the district court to consider the merits of Nesbit's claims. 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.

### VACATED AND REMANDED