

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7868

ROBERT LEE ELMORE,

Petitioner - Appellant,

versus

BARNEY LLOYD, Warden of Tyger River Correctional Institution; CHARLES M. CONDON, Attorney General of the State of South Carolina,

Respondents - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Dennis W. Shedd, District Judge. (CA-01-956-9-19RB)

Submitted: February 14, 2002

Decided: February 27, 2002

Before WIDENER, LUTTIG, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Robert Lee Elmore, Appellant Pro Se. Donald John Zelenka, Chief Deputy Attorney General, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Robert Lee Elmore seeks to appeal from the district court's order adopting the report and recommendation of the magistrate judge and dismissing his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 2001) without prejudice because he failed to exhaust state court remedies. Because Elmore can exhaust his state court remedies and re-file his petition, his appeal of the dismissal without prejudice is interlocutory and not subject to appellate review under Domino Sugar Corp. v. Sugar Workers Local 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). Accordingly, we deny a certificate of appealability and dismiss the 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