

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 02-7151**

---

ALVON ALLEN THOMAS,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

---

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. N. Carlton Tilley, Jr., Chief District Judge. (CA-02-426-1)

---

Submitted: December 9, 2002

Decided: January 28, 2003

---

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

---

Affirmed as modified by unpublished per curiam opinion.

---

Alvon Allen Thomas, Appellant Pro Se. Benjamin H. White, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Alvon Allen Thomas, a federal prisoner, appeals the district court's order accepting the recommendation of the magistrate judge and dismissing for failure to file in the proper court his petition filed under 28 U.S.C. § 2241 (2000). We grant Thomas's motion for leave to proceed in forma pauperis. We have reviewed the record and find no reversible error. Accordingly, we affirm substantially on the reasoning of the district court, but modify the district court's order to reflect that the dismissal is without prejudice to Thomas' right to refile in the proper court. See Thomas v. United States, No. CA-02-426-1 (M.D.N.C. filed July 2, 2002, entered July 5, 2002). 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.

AFFIRMED AS MODIFIED