

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7835

WAYMARE BILLUPS,

Petitioner - Appellant,

versus

THEODIS BECK; BOYD BENNETT; ERNEST SUTTON;
WALTER G. EDWARDS, JR.,

Respondents - Appellees.

No. 03-6064

WAYMARE BILLUPS,

Plaintiff - Appellant,

versus

THEODIS BECK; BOYD BENNETT; ERNEST SUTTON;
WALTER G. EDWARDS, JR.,

Defendants - Appellees.

Appeals from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, Chief District Judge; Malcolm J. Howard, District Judge. (CA-02-753-5-HO, CA-02-720-5-BO)

Submitted: May 15, 2003

Decided: May 20, 2003

Before LUTTIG and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

No. 02-7835 dismissed and No. 03-6064 affirmed as modified by unpublished per curiam opinion.

Waymare Billups, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

In these consolidated appeals, Waymare Billups appeals the district court's orders dismissing without prejudice for failure to exhaust state remedies his 28 U.S.C. § 2254 (2000) petition and dismissing as frivolous his 42 U.S.C. § 1983 (2000) complaint under 28 U.S.C. § 1915(e)(2)(B) (2000). When, as in Appeal No. 02-7835, a district court dismisses a § 2254 petition solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 122 S. Ct. 318 (2001). We have independently reviewed the record and conclude that Billups has not made the requisite showing. See Miller-El v. Cockrell, 123 S. Ct. 1029, 1039 (2003). Accordingly, we deny a certificate of appealability and dismiss the appeal.

In No. 03-6064, we have reviewed the record and find no reversible error. Accordingly, we deny the motion for appointment of counsel and affirm on the reasoning of the district court. See Billups v. Beck, No. CA-02-720-5-BO (E.D.N.C. filed Oct. 21, 2002; entered Oct. 23, 2002). Because Billups may refile his action if

his conviction ever is overturned or called into question by the appropriate court, we modify the judgment to be a dismissal without prejudice. In both cases, we deny the motion for a writ of habeas corpus. 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.

No. 02-7835 - DISMISSED

No. 03-6064 - AFFIRMED AS MODIFIED