

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 04-6850**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DARIUS MAURICE BAILEY,

Defendant - Appellant.

---

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, District Judge. (CR-96-90; CA-04-239-2)

---

Submitted: September 8, 2004

Decided: September 21, 2004

---

Before SHEDD and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

---

Affirmed by unpublished per curiam opinion.

---

Darius Maurice Bailey, Appellant Pro Se. Robert Joseph Seidel, Jr., Assistant United States Attorney, Norfolk, Virginia, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Darius Maurice Bailey appeals the district court's order recharacterizing his post-conviction motion as a motion under 28 U.S.C. § 2255 (2000) and denying it as untimely. Bailey's motion challenges the district court's jurisdiction at the time of his conviction. Because Bailey timely objected to the district court's recharacterization, Bailey was entitled to have the district court "rule on the merits of [his] motion as filed." United States v. Emmanuel, 288 F.3d 644, 649 (4th Cir. 2002). Although the district court erred in converting the motion in the face of Bailey's objection, it is clear from the record that the motion as characterized by Bailey was without merit. Because we are able to affirm the judgment of a district court on any basis supported by the record, we affirm the district court's denial of Bailey's motion. See Eisenberg v. Wachovia Bank, N.A., 301 F.3d 220, 222 (4th Cir. 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