

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-7161

NEHEMIAH POPE, JR.,

Petitioner - Appellant,

versus

FRANKLIN FREEMAN; TOM MARTIN, Warden,

Respondents - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, District Judge. (CA-97-162-H)

Submitted: November 12, 1997

Decided: December 11, 1997

Before HAMILTON, LUTTIG, and WILLIAMS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Nehemiah Pope, Jr., Appellant Pro Se. Clarence Joe DelForge, III, OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA, Raleigh, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Nehemiah Pope, Jr. appeals the district court's order denying relief on his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 1997). In 1994, Pope was convicted of second degree murder in North Carolina state court and sentenced to fifty years' imprisonment for the shooting death of Deputy Sheriff Futrell. See State v. Pope, 468 S.E.2d 552 (N.C. Ct. App. 1996). In his petition, Pope claims that the trial judge erred by: (1) finding as an aggravating factor at sentencing that the offense was committed against a law enforcement officer while in the performance of his employment; (2) commenting on the evidence; and (3) allowing the State to impeach Pope with extrinsic evidence. The district court adopted the magistrate judge's memorandum and recommendation to dismiss the petition. In his memorandum and recommendation, the magistrate judge concluded that claims (1) and (3) were procedurally barred and claim (2) failed on the merits. We have reviewed the record and the district court's opinion adopting the magistrate judge's memorandum and recommendation and find no reversible error. 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