

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JERRY SELLERS,
Petitioner-Appellant.

v.

No. 98-7078

ALTON BASKERVILLE, Warden,
Respondent-Appellee.

JERRY SELLERS,
Plaintiff-Appellant.

v.

SECOND GENESIS, INCORPORATED;

No. 98-7738

CATHLEEN STAFFORD, Clinical
Manager; ROBERT THOMAS, Senior
Counselor; WILL FARLEY, Counselor,
Defendants-Appellees.

Appeals from the United States District Court
for the Eastern District of Virginia, at Richmond.
Robert E. Payne, District Judge;
Robert R. Merhige, Jr., Senior District Judge.
(CA-97-777, CA-98-291)

Submitted: February 26, 1999

Decided: May 6, 1999

Before WILKINS and HAMILTON, Circuit Judges, and
HALL, Senior Circuit Judge.

No. 98-7078 dismissed and No. 98-7738 affirmed in part and dismissed in part by unpublished per curiam opinion.

COUNSEL

Jerry Sellers, Appellant Pro Se. Linwood Theodore Wells, Jr., Assistant Attorney General, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

These are consolidated appeals arising out of Jerry Sellers' conviction and subsequently suspended sentence for statutory burglary. In No. 98-7078, Sellers appeals the district court's denial of his 28 U.S.C.A. § 2254 (West 1994 & Supp. 1998) petition. In No. 98-7738, he appeals the district court's dismissal of his 42 U.S.C.A. § 1983 (West Supp. 1998), Americans with Disabilities Act, and Rehabilitation Act claims against the drug treatment center which he attended in conjunction with his suspended sentence.

Addressing appeal No. 98-7078, we have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we deny a certificate of appealability and dismiss the appeal on the reasoning of the district court. See Sellers v. Baskerville, No. CA-97-777 (E.D. Va. June 5 & July 16, 1998).

Turning to appeal No. 98-7738, we note that the district court dismissed Sellers' action on the grounds that: (1) Second Genesis, the drug treatment center at issue, was not acting under color of state law, thus eviscerating Sellers' § 1983 claim; and (2) Sellers failed to cure the defects noted by the magistrate judge's report and recommenda-

tion in conjunction with his ADA and RA claims. Without expressing opinion as to whether Second Genesis was acting under color of state law, we find that Sellers has failed to establish a constitutional violation, and accordingly we affirm the district court's dismissal of Sellers' § 1983 claims on this alternative ground. Turning to Sellers' ADA and RA claims, we agree with the district court that Sellers failed to respond to the deficiencies noted by the magistrate judge's report and recommendation in his objections thereto. We therefore find that he has waived appellate review and we dismiss those claims.

Accordingly, we deny a certificate of appealability and dismiss in No. 98-7078, and affirm in part and dismiss in part in No. 98-7738. 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. 98-7078 - DISMISSED

No. 98-7738 - AFFIRMED IN PART

AND DISMISSED IN PART