

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-7133

KENNETH AARON MCNEILL,

Petitioner - Appellant,

versus

W. R. BARKER,

Respondent - Appellee,

and

STATE OF NORTH CAROLINA,

Respondent.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, Senior District Judge; Alexander B. Denson, Magistrate Judge. (CA-97-431-5-BR3)

Submitted: December 17, 1998

Decided: January 6, 1999

Before WILKINS, NIEMEYER, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Kenneth Aaron McNeill, Appellant Pro Se. William Norris Farrell, Jr., Special Deputy Attorney General, Rebecca Kendrick Cleveland, Assistant Attorney General, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Kenneth McNeill appeals the magistrate judge's order and memorandum and recommendation which denied his motion for discovery, granted his motion to amend and recommended that his 28 U.S.C.A. § 2254 (West 1994 & Supp. 1998) motion be denied. We dismiss the appeal for lack of jurisdiction because the order and memorandum and recommendation are not appealable. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (1994), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (1994); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). The order here appealed is neither a final order nor an appealable interlocutory or collateral order.

We deny a certificate of appealability and dismiss the appeal as interlocutory. 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