

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-6889

DONALD LEE BARRICK, JR.,

Petitioner - Appellant,

versus

MICHAEL MOORE, Director, SCDC; CHARLES M.
CONDON, Attorney General of South Carolina,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Rock Hill. Cameron McGowan Currie, District
Judge. (CA-98-3106-22BD)

Submitted: September 30, 1999

Decided: October 7, 1999

Before NIEMEYER, WILLIAMS, and MICHAEL, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Donald Lee Barrick, Jr., Appellant Pro Se. Donald John Zelenka,
Chief Deputy Attorney General, Columbia, South Carolina, for
Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Donald Lee Barrick, Jr., appeals from the district court's order denying his application for a certificate of appealability to challenge the dismissal without prejudice of his 28 U.S.C.A. § 2254 (West Supp. 1999) petition. The district court properly adopted the magistrate judge's recommendation to dismiss without prejudice Barrick's § 2254 petition for failure to exhaust state remedies. Because Barrick cannot make a substantial showing that he was denied a constitutional right, the district court properly denied his application for a certificate of appealability. Consequently, 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