

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

GARY LEWIS MILLER,

Plaintiff-Appellant.

v.

DANIEL L. STIENEKE ; MACK JARVIS;
MICHAEL E. BUMGARNER; J. HARDY;

No. 99-7165

SERGEANT BISSETT; CORRECTIONAL
OFFICER LINDSEY; CORRECTIONAL
OFFICER JACKSON; SERGEANT ADAMS;
CORRECTIONAL OFFICER HILL; HAROLD
SMALLS,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of North Carolina, at Raleigh.
James C. Fox, District Judge.
(CA-98-845-5-F)

Submitted: December 16, 1999

Decided: December 28, 1999

Before MURNAGHAN and MOTZ, Circuit Judges, and
BUTZNER, Senior Circuit Judge.

Affirmed in part and dismissed in part by unpublished per curiam
opinion.

COUNSEL

Gary Lewis Miller, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Gary L. Miller appeals the district court's orders: (1) denying his petition for a writ of mandamus and a preliminary injunction for the return of certain items of personal property, (2) denying his petition for a writ of mandamus seeking review of the decision of North Carolina Prisoner Legal Services not to represent him on his 42 U.S.C.A. § 1983 (West Supp. 1999) action, and (3) seeking discovery materials. We affirm in part and dismiss in part.

Although a final order has not been entered in this action, this Court has jurisdiction to review the denial of Miller's motion for a preliminary injunction. See 28 U.S.C. § 1292(a)(1994). We have reviewed the record and find that the claim contained in his motion for a preliminary injunction is beyond the scope of this action and that Miller's failure to exhaust his administrative remedies bars recovery on this claim. Accordingly, we affirm the decision of the district court because Miller has failed to show any likelihood of success on the merits of this claim. See Hoechst Diafoil Co. v. Nan Ya Plastics Corp., 174 F.3d 411, 417 (4th Cir. 1999).

Because the district court has not entered a final order in this action, the court's orders denying his two petitions for mandamus are nonappealable, interlocutory orders. We therefore dismiss the appeal of the district court's denial of these petitions for lack of jurisdiction. See 28 U.S.C. § 1292 (1994); Fed. R. Civ. P. 54(b); see also Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). Similarly, the denial of Miller's discovery motion is not immediately appealable. See id.

We deny Miller's motions to stay the district court proceedings pending interlocutory review and for the production of documents. We dispense with oral argument because the facts and legal conten-

tions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART AND DISMISSED IN PART