

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 22-6858**

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BENJAMIN FORREST CARTER,

Petitioner - Appellant,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS DIRECTOR,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Liam O’Grady, Senior District Judge. (1:22-cv-00036-LO-JFA)

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Submitted: January 26, 2024

Decided: February 9, 2024

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Before QUATTLEBAUM and RUSHING, Circuit Judges, and TRAXLER, Senior Circuit Judge.

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Vacated and remanded by unpublished per curiam opinion.

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Benjamin Forrest Carter, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Benjamin Forrest Carter appeals the district court's orders dismissing without prejudice his 28 U.S.C. § 2254 petition for failure to exhaust state court remedies and denying his Fed. R. Civ. P. 59(e) motion. In his § 2254 petition, Carter presented exhausted and unexhausted claims. The Supreme Court has “held that ‘mixed’ habeas petitions—containing both exhausted and unexhausted claims—cannot be adjudicated.” *Jones v. Bock*, 549 U.S. 199, 221 (2007) (citing *Rose v. Lundy*, 455 U.S. 509, 522 (1982)). “[A district] court presented with a mixed habeas petition ‘should allow the petitioner to delete the unexhausted claims and to proceed with the exhausted claims’” *Id.* at 222 (quoting *Rhines v. Weber*, 544 U.S. 269, 278 (2005)).

After Respondent moved to dismiss the § 2254 petition, Carter filed a declaration waiving the unexhausted ineffective assistance of counsel claims so that his exhausted claims could proceed. However, the court appears to have misconstrued Carter's filing, finding that it indicated he did not want to waive his unexhausted claims. In light of Carter's pro se status and his repeated assertions that he wished to proceed only on the exhausted claims, we vacate the district court's orders and remand for further proceedings on the exhausted claims. We deny a certificate of appealability as unnecessary. *See Harbison v. Bell*, 556 U.S. 180, 183 (2009).

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*VACATED AND REMANDED*