

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-6998

JEFFREY WHITLOW,

Petitioner - Appellant,

v.

BRICK TRIPP; UNITED STATES OF AMERICA; ERIC HOLDER, United States Attorney General; UNITED STATES CONGRESS; EASTERN DISTRICT OF NORTH CAROLINA, Western Division; DISTRICT OF COLUMBIA; RONALD C. MACHEN, United States Attorney,

Respondents - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:13-hc-02251-BO)

Submitted: November 25, 2014 Decided: December 11, 2014

Before KING, KEENAN, and THACKER, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Jeffrey Whitlow, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jeffrey Whitlow appeals the district court's order dismissing his 28 U.S.C. § 2241 (2012) petition for failure to state a claim upon which relief can be granted. Because Whitlow is in custody pursuant to a sentence imposed by the Superior Court of the District of Columbia, the district court may not entertain Whitlow's § 2241 petition if he has failed to exhaust the remedy provided by D.C. Code § 23-110 (Supp. 2014) or has been denied § 23-110 relief by the Superior court, unless it appears that a § 23-110 motion would be inadequate or ineffective to test the legality of his detention. D.C. Code § 23-110(a), (g); Swain v. Pressley, 430 U.S. 372, 377-78 (1977). Whitlow has not alleged, and nothing in the record indicates, that he has filed a § 23-110 motion with the Superior Court, and Whitlow has not asserted that § 23-110 would be inadequate or ineffective. Therefore, the district court lacked jurisdiction to entertain Whitlow's § 2241 petition.

Accordingly, we grant Whitlow leave to proceed in forma pauperis, vacate the district court's order, and remand. On remand the district court should dismiss Whitlow's § 2241 petition for lack of jurisdiction unless Whitlow demonstrates that he has met the requirements of § 23-110 allowing a federal

court to entertain his § 2241 petition.* 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

* By this disposition, we offer no opinion as to whether Whitlow's petition is otherwise properly before the district court or as to his petition's merits.