

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-7504

DERRICK LAMONT ROBERTSON,

Petitioner - Appellant,

v.

CRAIG APKER,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:13-hc-02274-BO)

Submitted: October 20, 2017

Decided: November 8, 2017

Before SHEDD, AGEE, and KEENAN, Circuit Judges.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

Derrick Lamont Robertson, Appellant Pro Se. Jennifer P. May-Parker, Seth Morgan Wood, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick Lamont Robertson appeals the district court's orders dismissing without prejudice his pro se 28 U.S.C. § 2241 (2012) petition and denying his motion for reconsideration. For the reasons that follow, we affirm in part, vacate in part, and remand for further proceedings.

Robertson challenges the district court's dismissal of his pro se § 2241 petition as duplicative of a counseled motion for reconsideration or, alternatively, for § 2241 relief, which was filed on Robertson's behalf under a separate case number (the "counseled motion"). Concern for efficient judicial administration generally requires federal courts to avoid duplicative federal litigation. *See Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976); *Great Am. Ins. Co. v. Gross*, 468 F.3d 199, 206 & 207 n.6 (4th Cir. 2006). "[T]he general rule is that a suit is duplicative of another suit if the parties, issues and available relief do not significantly differ between the two actions." *I.A. Durbin, Inc. v. Jefferson Nat'l Bank*, 793 F.2d 1541, 1551 (11th Cir. 1986); *see Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 689 (9th Cir. 2007), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880, 904 (2008). "Trial courts are afforded broad discretion in determining whether to stay or dismiss litigation in order to avoid duplicating a proceeding already pending in another federal court." *I.A. Durbin*, 793 F.2d at 1551-52. "However, a court abuses its discretion when it enjoins a party from proceeding in another suit that is not truly duplicative of the suit before it." *Smith v. SEC*, 129 F.3d 356, 361 (6th Cir. 1997).

We have reviewed the record and discern no abuse of discretion in the district court's decision to dismiss Robertson's pro se § 2241 petition as duplicative of the counseled motion, to the extent that both filings effectively seek the same relief from the same criminal judgment in reliance on the same essential claims for relief. We also observe, however, that the specific arguments raised in the counseled motion are not identical to those raised in the pro se petition—notably, with respect to the request for relief under § 2241. To the extent the arguments raised in the counseled motion are not duplicative of Robertson's pro se request for relief under § 2241 and § 2255(e), we vacate the dismissal order in part and remand to permit the district court to consider these pro se arguments in conjunction with the pending counseled motion. In so doing, we express no opinion as to the merits of Robertson's claims for relief, leaving consideration of those issues to the district court in the first instance.

Accordingly, we grant leave to appeal in forma pauperis and affirm the district court's judgment in part, insofar as the pro se petition raises the same grounds for relief as the counseled motion. However, we vacate the court's judgment with respect to any argument raised in the pro se petition under §2241, 2255(e) not encompassed in the counseled motion. We grant Robertson's motion to remand and deny as moot Robertson's petition for writ of mandamus. 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.

*AFFIRMED IN PART;
VACATED IN PART;
REMANDED*