

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6621

SCOTTY E. BOOTHE,

Petitioner - Appellant,

v.

DAVID BALLARD,

Respondent - Appellee.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Thomas E. Johnston, District Judge. (2:14-cv-25165)

Submitted: October 19, 2016

Decided: November 18, 2016

Before KEENAN, FLOYD, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Scotty E. Boothe, Appellant Pro Se. Shannon Frederick Kiser, OFFICE OF THE ATTORNEY GENERAL, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Scotty E. Boothe appeals the district court's order adopting the magistrate judge's recommendation and denying relief on Boothe's 28 U.S.C. § 2254 (2012) petition. The district court granted a partial certificate of appealability (COA), specifying a single issue relevant to the denial of four of Boothe's ineffective assistance of counsel claims as unexhausted but procedurally defaulted:

Under [W. Va. Code Ann. § 53-4A-1(c) (LexisNexis 2016)], may a court apply the statutory rebuttable presumption in favor of a knowing and intelligent waiver of certain claims if the petitioner was represented by counsel during the applicable proceedings and fails to argue that the waiver was not voluntary, or must the record nonetheless conclusively demonstrate that the waiver was not voluntary [sic] before a court may find that the petitioner waived certain claims?

Boothe has not requested that we expand the COA, see 4th Cir. R. 22(a)(2) (governing expansion of COA), and does not address the substance of his remaining claims for relief in his informal brief, see Williams v. Giant Food Inc., 370 F.3d 423, 430 n.4 (4th Cir. 2004) (deeming issues not raised in appellate brief abandoned on appeal).

We have thoroughly reviewed the record in this case and find no reversible error in the district court's conclusion that, under the facts presented, the statutory presumption under § 53-4A-1(c) would act as a procedural bar to Boothe's

unexhausted claims. Accordingly, we grant leave to proceed in forma pauperis and affirm substantially for the reasons stated by the district court. Boothe v. Ballard, No. 2:14-cv-25165 (S.D. W. Va. Mar. 31, 2016). 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