

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6726

ARGENI BATALDO-CASTILLO,

Petitioner - Appellant,

v.

WARDEN TRAVIS M. BRAGG,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Richard M. Gergel, District Judge. (6:15-cv-03717-RMG)

Submitted: January 30, 2017

Decided: March 3, 2017

Before FLOYD and HARRIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

Argeni Bataldo-Castillo, Appellant Pro Se. Christopher Gibbs, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Argeni Bataldo-Castillo, a federal prisoner, appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2241 (2012) petition. It is undisputed that Bataldo-Castillo did not exhaust his administrative remedies before filing his petition. Although the district court denied Bataldo-Castillo's petition with prejudice on the merits, we conclude that the dismissal should have been without prejudice for failure to exhaust. See Timms v. Johns, 627 F.3d 525, 530-31 (4th Cir. 2010). Accordingly, we affirm the dismissal order as modified to reflect that the dismissal is without prejudice. See 28 U.S.C. § 2106 (2012). 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 AS MODIFIED