

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-6387

FREDERICK BANKS,

Petitioner - Appellant,

v.

DR. ALLISSA MARQUEZ; DR. LOGAN GRADY; DR. CAHILL; MARK HORNAK; U.S. DISTRICT COURT, Western District of Pennsylvania; JEFF SESSIONS; DIRECTOR OF BUREAU OF PRISONS; ADRIAN ROE; ROBERT CESSAR; SOO SONG,

Respondents - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Fox, Senior District Judge. (5:17-ct-03064-F)

Submitted: July 27, 2017

Decided: August 1, 2017

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

Affirmed by unpublished per curiam opinion.

Frederick Hamilton Banks, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Frederick Banks appeals the district court's order dismissing without prejudice what the district court construed as a 28 U.S.C. § 2241 (2012) petition. In his petition, Banks sought immediate release from custody or, in the least, that his competency proceedings be conducted. Banks explicitly admitted in his petition that he failed to exhaust his administrative remedies and, thus, we discern no error in the district court's decision to sua sponte dismiss Banks' petition for failure to administratively exhaust. *See Custis v. Davis*, 851 F.3d 358, 361-63 (4th Cir. 2017) (holding that a court may sua sponte dismiss an inmate's complaint for failure to exhaust administrative remedies only if failure to exhaust is apparent on the face of the complaint and the district court did not first require the inmate to substantiate exhaustion). Accordingly, we grant Banks' application to proceed in forma pauperis and affirm the district court's judgment. 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