

**UNPUBLISHED**

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

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**No. 18-6647**

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KENNETH H. NEWKIRK,

Petitioner - Appellant,

v.

DEPT. OF CORRECTIONS, Director,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at  
Richmond. Henry E. Hudson, Senior District Judge. (3:18-cv-00312-HEH-RCY)

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Submitted: October 16, 2018

Decided: October 19, 2018

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Before WYNN and DIAZ, Circuit Judges, and SHEDD, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Kenneth H. Newkirk, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenneth H. Newkirk appeals the district court's order dismissing his 28 U.S.C. § 2254 (2012) petition without prejudice for failure to comply with the court's prior order and denying his motion for recusal.\* He also appeals the court's order denying his motions for bond and for an evidentiary hearing. We have reviewed the record and find no reversible error. Accordingly, we grant Newkirk leave to proceed in forma pauperis and affirm for the reasons stated by the district court. *Newkirk v. Dep't of Corr.*, No. 3:18-cv-00312-HEH-RCY (E.D. Va. May 24, 2018 & June 15, 2018). We deny a certificate of appealability as unnecessary. *See Harbison v. Bell*, 556 U.S. 180, 183 (2009); *United States v. McRae*, 793 F.3d 392, 399 (4th Cir. 2015). 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*

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\* Although the dismissal is without prejudice, we conclude that the order is final and appealable because Newkirk could not "save his action by merely amending his complaint." *Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 623 (4th Cir. 2015) (internal quotation marks omitted).