

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 12-5656

JAMES D. LUEDTKE,
Petitioner - Appellant,**FILED**
Jan 16, 2013
DEBORAH S. HUNT, Clerk

v.

DAVID BERKEBILE, Warden,
Respondent - Appellee.

Before: SUTTON and DONALD, Circuit Judges; ECONOMUS, District Judge.

JUDGMENTOn Appeal from the United States District Court
for the Eastern District of Kentucky at Pikeville.THIS CAUSE was heard on the record from the district court and was submitted on the
briefs without oral argument.IN CONSIDERATION WHEREOF, it is ORDERED that the district court's dismissal
of Luedtke's fourth claim is VACATED, the remainder of the district court's judgment is
AFFIRMED, and the case is REMANDED for further proceedings consistent with the opinion
of this court. IT IS FURTHER ORDERED that Luedtke's motion for appointment of counsel
is DENIED.**ENTERED BY ORDER OF THE COURT**

Deborah S. Hunt, Clerk