

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1570

RONNIE LEE HOWARD,

Plaintiff - Appellant,

v.

RED LOBSTER OPERATED BY DARDEN RESTAURANTS, INC.,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at
Newport News. Mark S. Davis, District Judge. (4:17-cv-00018-MSD-DEM)

Submitted: November 21, 2017

Decided: November 27, 2017

Before WYNN and THACKER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Ronnie Lee Howard, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ronnie Lee Howard appeals the district court's order of April 14, 2017, dismissing without prejudice his employment discrimination action. After the district court dismissed Howard's complaint for failure to exhaust his administrative remedies, Howard filed a notice of appeal to which he attached a copy of a right to sue notice issued prior to the filing of his federal action. The district court construed this filing as a motion for reconsideration pursuant to Fed. R. Civ. P. 60(b) and issued an order indicating its inclination to grant the motion. *See Fobian v. Storage Tech. Corp.*, 164 F.3d 887, 891-92 (4th Cir. 1999) (establishing procedure for handling Rule 60(b) motions filed while judgment is on appeal). This Court remanded the matter for the limited purpose of considering the merits of Howard's motion for reconsideration. *See id.*

On remand, the district court vacated the April 14, 2017, order of dismissal. Because the order on appeal has been vacated, this appeal is now moot. *See Incumaa v. Ozmint*, 507 F.3d 281, 286 (4th Cir. 2007) (setting forth principles of appellate mootness); *Mellen v. Bunting*, 327 F.3d 355, 363-64 (4th Cir. 2003) ("When a case has become moot after the entry of the district court's judgment, an appellate court no longer has jurisdiction to entertain the appeal.").

Accordingly, we dismiss the appeal as moot. 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.

DISMISSED