

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7202

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MERVYN A. PHELAN, SR.,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
J. Frederick Motz, Senior District Judge. (1:12-cr-00103-JFM-2; 1:16-cv-00288-JFM)

Submitted: February 20, 2018

Decided: March 7, 2018

Before TRAXLER, KEENAN, and HARRIS, Circuit Judges.

Dismissed and remanded by unpublished per curiam opinion.

Mervyn A. Phelan, Sr., Appellant Pro Se. Kathleen O'Connell Gavin, Jefferson McClure Gray, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mervyn A. Phelan, Sr., seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. Before addressing the merits of Phelan's appeal, we must first be assured that we have jurisdiction. *Porter v. Zook*, 803 F.3d 694, 696 (4th Cir. 2015). We may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-47 (1949). "Ordinarily, a district court order is not final until it has resolved *all* claims as to all parties." *Porter*, 803 F.3d at 696 (internal quotation marks omitted); *see* Fed. R. Civ. P. 54(b). Generally, "a final decision is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Ray Haluch Gravel Co. v. Cent. Pension Fund of Int'l Union of Operating Eng'rs & Participating Emp'rs*, 134 S. Ct. 773, 779 (2014) (internal quotation marks omitted). "Regardless of the label given a district court decision, if it appears from the record that the district court has not adjudicated all of the issues in a case, then there is no final order." *Porter*, 803 F.3d at 696.

Phelan raised claims of ineffective assistance of counsel and prosecutorial misconduct. Because the district court did not address the prosecutorial misconduct claim, we lack jurisdiction over this appeal. *See Porter*, 803 F.3d at 695, 699.

Accordingly, we dismiss the appeal as interlocutory and remand to the district court for consideration of Phelan's prosecutorial misconduct claim. We deny Phelan's motions for a certificate of appealability and appointment of counsel, and express no opinion regarding the merits of Phelan's claims. 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 AND REMANDED