

**UNPUBLISHED**

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

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**No. 19-6781**

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DMITRY PRONIN,

Plaintiff - Appellant,

v.

SHERIFF J. AL CANNON, JR.; JACOBS; STEPHANIE SINGLETON; M.  
MARSILLO; J BOWEN; T M. EVANS; EVANS; SMITH; K. RICHARDSON,

Defendants - Appellees.

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Appeal from the United States District Court for the District of South Carolina, at  
Orangeburg. David C. Norton, District Judge. (5:19-cv-00594-DCN)

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Submitted: December 12, 2019

Decided: December 17, 2019

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Before GREGORY, Chief Judge, MOTZ, Circuit Judge, and SHEDD, Senior Circuit  
Judge.

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Dismissed and remanded with instructions by unpublished per curiam opinion.

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Dmitry Pronin, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dmitry Pronin appeals from the district court's order adopting the report and recommendation of the magistrate judge and dismissing his complaint without prejudice for failure to state a claim. Finding that the district court's order is interlocutory, we dismiss the appeal.

In his 42 U.S.C. § 1983 (2012) complaint, Pronin, a South Carolina prisoner, alleged that he experienced various unconstitutional conditions of confinement. The magistrate judge found that Pronin's allegations fell short of pleading a constitutional violation. Thus, the court permitted Pronin to file an amended complaint. Pronin filed an amended complaint, which the magistrate judge recommended dismissing without prejudice for failure to state a claim. The district court adopted the recommendation.

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, 545-46 (1949). An order dismissing a complaint without prejudice is not an appealable final order if “the plaintiff could save his action by merely amending his complaint.” *Domino Sugar Corp. v. Sugar Workers Local Union 392*, 10 F.3d 1064, 1066-67 (4th Cir. 1993). “[I]f the grounds of the dismissal make clear that no amendment could cure the defects in the plaintiff's case, the order dismissing the complaint is final in fact and therefore appealable.” *Goode v. Cent. Va. Legal Aid Soc'y*, 807 F.3d 619, 623 (4th Cir. 2015) (internal quotation marks omitted). In determining whether a dismissal without prejudice is appealable, we examine the facts of each case. *Id.* at 623-24. In reaching these case-specific determinations, “[w]hat makes

[dismissals without prejudice] final or nonfinal is not the speculative possibility of a new lawsuit, but that they ‘end the litigation on the merits and leave nothing for the court to do but execute the judgment.’” *GO Comput., Inc. v. Microsoft Corp.*, 508 F.3d 170, 176 (4th Cir. 2007) (quoting *MDK, Inc. v. Mike's Train House, Inc.*, 27 F.3d 116, 119 (4th Cir. 1994)).

Our review of the record does not convince us that amendment would be futile. *See Martin v. Duffy*, 858 F.3d 239, 247-48 (4th Cir. 2017) (stating that, since “district courts have thrice concluded that Martin has been unable to allege sufficient facts to establish a viable claim under the Equal Protection Clause, we find that Martin’s pleading deficiency cannot be cured by amendment of his complaint”), *cert. denied*, 138 S. Ct. 738 (2018). Accordingly, under *Goode*, the order is not a final, appealable order. Thus, we dismiss the appeal for lack of jurisdiction and remand with instructions to either provide Pronin another opportunity to amend and/or clearly indicate that further amendments would not cure the complaint’s defects and that the dismissal is, thus, with prejudice. We dismiss Pronin’s motion to dismiss a party. 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 WITH INSTRUCTIONS*