

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7173

JORGE GEVARA,

Petitioner - Appellant,

v.

STATE OF NORTH CAROLINA GUILFORD COUNTY,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, District Judge. (1:12-cv-00373-TDS-LPA)

Submitted: November 20, 2012

Decided: November 27, 2012

Before TRAXLER, Chief Judge, and SHEDD and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jorge Gevara, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jorge Gevara seeks to appeal the district court's order adopting the recommendation of the magistrate judge and dismissing his 28 U.S.C. § 2254 (2006) petition without prejudice because he failed to file it on the proper forms and failed to submit either the required filing fee or an application to proceed in forma pauperis. Generally, a district court's dismissal of a complaint without prejudice is not appealable. Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). However, "if 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 appellate jurisdiction exists." Id. at 1066 (internal quotation marks and alteration omitted).

In this case, Gevara may be able to save his petition by amending it to comply with the district court's order. Therefore, the court's order dismissing Gevara's petition without prejudice is not an appealable order. Accordingly, we deny leave to proceed in forma pauperis and dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented

in the materials before the court and argument would not aid the decisional process.

DISMISSED