

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7470

CLYDE KIRBY WHITLEY,

Petitioner - Appellant,

v.

FRANK STRADA; STATE OF NORTH CAROLINA,

Respondents - Appellees.

Appeal from the United States District Court for the Eastern
District of North Carolina, at Raleigh. Terrence W. Boyle,
District Judge. (5:12-hc-02016-BO)

Submitted: November 13, 2012

Decided: November 16, 2012

Before NIEMEYER, GREGORY, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Clyde Kirby Whitley, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Clyde Kirby Whitley appeals the district court's order dismissing his petition for writ of error coram nobis for lack of subject matter jurisdiction.* We have reviewed the record and find no reversible error. Accordingly, although we grant leave to proceed in forma pauperis, we affirm the denial of the petition for writ of error coram nobis for the reasons stated by the district court. Whitley v. Strada, No. 5:12-hc-02016-BO (E.D.N.C. Aug. 16, 2012). To the extent the district court did not explicitly consider Whitley's petition for writ of mandamus, motion to enforce judgment, motion to enforce plea agreement, motion for clarification, and motion for appointment of counsel, we conclude that any error is harmless because the claims Whitley sought to advance in these motions are without merit. We deny Whitley's request for appointment of counsel and 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.

AFFIRMED

* While dismissals without prejudice generally are interlocutory and not appealable, a dismissal without prejudice may be final if no amendment to the complaint can cure the defect in the plaintiff's case. Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). On the available record, we conclude that the defect identified by the district court cannot be cured by an amendment to the complaint and that the order therefore is appealable.