

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7523

DAVID GRAHAM GOODMAN,

Plaintiff - Appellant,

v.

KENNETH W. STOLLE, Sheriff/High Constable; JOHN DOE,
Sergeant/Sheriffs Deputy; JOHN DOE, Corporal/Sheriffs
Deputy; JOHN DOE, Deputy Sheriff; JANE DOE, Deputy Sheriff,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. Gerald Bruce Lee, District
Judge. (1:13-cv-00540-GBL-IDD)

Submitted: January 2, 2014

Decided: January 13, 2014

Before AGEE and FLOYD, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

David Graham Goodman, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Graham Goodman appeals the district court's order dismissing his 42 U.S.C. § 1983 (2012) complaint under Fed. R. Civ. P. 41(b) for failure to comply with its prior order. We vacate the order and remand for further proceedings.

We review the district court's order for abuse of discretion. See Ballard v. Carlson, 882 F.2d 93, 95-96 (4th Cir. 1989). A district court abuses its discretion when it relies on erroneous factual or legal premises. United States v. Thompson-Riviere, 561 F.3d 345, 348 (4th Cir. 2009) (citation and quotations omitted). The district court dismissed Goodman's complaint because he "submitted an amended complaint but has not returned the Consent Form or exhaustion affidavit." On appeal, Goodman claims that he submitted the consent form and exhaustion affidavit in the same envelope as the amended complaint. Upon reviewing the record, we have determined that the consent form and exhaustion affidavit are located in the record at R. 11 and R. 10-2. We thus conclude that the district court relied on an erroneous factual premise in dismissing the complaint.

Accordingly, we vacate the district court's order and remand for further proceedings. We deny Goodman's motion for a temporary restraining order. 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.

VACATED AND REMANDED