

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7759

AKIL RASHIDI BEY, ex rel. Aikido Graves,

Petitioner - Appellant,

v.

COMMONWEALTH OF VIRGINIA; PRINCE WILLIAM-MANASSAS ADULT
DETENTION CENTER,

Respondents - Appellees.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. T. S. Ellis, III, Senior
District Judge. (1:13-cv-01001-TSE-TCB)

Submitted: April 8, 2014

Decided: April 29, 2014

Before NIEMEYER, WYNN, and FLOYD, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Akil Rashidi Bey, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Akil Rashidi Bey seeks to appeal the district court's October 9, 2013, order dismissing without prejudice his 28 U.S.C. § 2254 (2012) petition. See Fed. R. Civ. P. 41(b). After reviewing Bey's handwritten petition, the district court issued an order on September 26, 2013, directing Bey to submit an amended petition and either pay the filing fee or apply to proceed in forma pauperis. The order also warned Bey of the consequences of failing to comply with the court's order. See Ballard v. Carlson, 882 F.2d 93, 95-96 (1989). When that order was returned as undeliverable, the district court concluded that Bey failed to notify it of a change of address, failed to comply with its September 26 order, and dismissed the action without prejudice.

We have reviewed the record and conclude that the court's September 26 order was mailed to an incorrect address, the origins of which are not known. We conclude, therefore, that Bey should be given an opportunity to comply with the court's order and pursue in a § 2254 proceeding those claims that, but for the district court's addressing error, could have been further developed before the district court. Accordingly, we grant Bey leave to proceed in forma pauperis, vacate the October 9 dismissal order, and remand the action for further

proceedings. 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