

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-6899

AZAZEL AUSAR N'ZINGA OUTLAW, a/k/a Rodney Andrew McNeil,

Plaintiff - Appellant,

v.

GREGG L. HERSHBERGER, Secretary for the Department of
Public Safety and Correctional Services,

Defendant - Appellee.

Appeal from the United States District Court for the District of
Maryland, at Baltimore. Richard D. Bennett, District Judge.
(1:15-cv-01257-RDB)

Submitted: October 28, 2015

Decided: November 10, 2015

Before GREGORY, AGEE, and THACKER, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Azazel Ausar N'Zinga Outlaw, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Appellant appeals from the district court's order dismissing his 42 U.S.C. § 1983 (2012) action for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B) (2012). The district court's order also stated that the dismissal should count as a strike for purposes of § 1915(e). On appeal, Appellant contends that he should have been permitted to amend his complaint. We hold that Appellant was not entitled to amend his complaint before dismissal.

The district court did not specify whether the complaint was dismissed with or without prejudice. Because the court stated that the dismissal would count as a strike, we conclude that the dismissal was with prejudice. See United States v. McClean, 566 F.3d 391, 396-97 (4th Cir. 2009) (dismissal without prejudice for failure to state a claim does not count as a strike). We note that dismissals under § 1915(e)(2)(B) should be without prejudice, see Nagy v. FMC Butner, 376 F.3d 252, 258 (4th Cir. 2004), and we modify the district court's order accordingly.

Therefore, we affirm the district court's dismissal, modifying it to show that the dismissal is without prejudice and does not count as a strike. 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.

AFFIRMED AS MODIFIED