

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-1364

JAAMAL FLEMING,

Plaintiff - Appellant,

v.

VIRGINIA STATE UNIVERSITY; KATRINA WALKER; COMMONWEALTH OF
VIRGINIA,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern
District of Virginia, at Richmond. M. Hannah Lauck, District
Judge. (3:15-cv-00268-MHL)

Submitted: October 21, 2016

Decided: December 2, 2016

Before NIEMEYER, SHEDD, and HARRIS, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Jaamal Fleming, Appellant Pro Se. Liza Shawn Simmons, Assistant
Attorney General, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jaamal Fleming appeals from the district court's order dismissing his civil action for lack of subject matter jurisdiction on the basis of Eleventh Amendment immunity. The district court did not reversibly err in concluding that it lacked subject matter jurisdiction over Fleming's complaint, and we reject his arguments on appeal to the contrary. The court's dismissal, however, should have been without prejudice. See S. Walk at Broadlands Homeowner's Assoc., Inc. v. OpenBand at Broadlands, LLC, 713 F.3d 175, 185 (4th Cir. 2013). We therefore grant leave to proceed in forma pauperis, modify the district court's order to reflect that the dismissal of Fleming's complaint for lack of subject matter jurisdiction is without prejudice, and affirm the dismissal as modified. See 28 U.S.C. § 2106 (2012); MM ex rel. DM v. Sch. Dist. of Greenville Cty., 303 F.3d 523, 536 (4th Cir. 2002) ("[W]e are entitled to affirm the court's judgment on alternate grounds, if such grounds are apparent from the record.").

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