

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6099

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LARRY DON BROWN,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Statesville. Richard L.
Voorhees, District Judge. (5:13-cr-00053-RLV-DCK-11;
5:15-cv-00118-RLV)

Submitted: May 26, 2016

Decided: June 1, 2016

Before TRAXLER, Chief Judge, and NIEMEYER and FLOYD, Circuit
Judges.

Dismissed by unpublished per curiam opinion.

Larry Don Brown, Appellant Pro Se. Amy Elizabeth Ray, Assistant
United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry Don Brown seeks to appeal the district court's order dismissing without prejudice in part his 28 U.S.C. § 2255 (2012) motion. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 545-47 (1949). Because the district court's order makes clear that Brown may raise the dismissed claims in a new § 2255 motion upon the conclusion of his direct appeal,* we conclude that the order Brown seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993).

* Brown appears to appeal the district court's determination out of concern that he will be barred from filing a later § 2255 motion. However:

If a habeas petitioner (state or federal) files an application for collateral relief that raises a successful appeal claim and additional claims, any subsequent petition will be considered 'second or successive' [only] if (a) the district court ruled on the merits of the additional claims in the initial petition, and (b) the petitioner seeks to raise those claims again in the subsequent petition.

In re Williams, 444 F.3d 233, 236 (4th Cir. 2006).

Accordingly, we dismiss the appeal for lack of jurisdiction. 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.

DISMISSED