

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6540

MARK MADISON LOWE,

Petitioner - Appellant,

v.

VIRGINIA DEPARTMENT OF SOCIAL SERVICES; PONNETTE SMITH,

Respondents - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:15-cv-00535-HEH)

Submitted: June 21, 2016

Decided: June 23, 2016

Before DUNCAN, KEENAN, and THACKER, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Mark Madison Lowe, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mark Madison Lowe appeals the district court's orders dismissing his petition for a writ of mandamus as frivolous and denying reconsideration. We have reviewed the record and find no reversible error. Accordingly, we grant Lowe's motions to proceed in forma pauperis and amend his informal brief, and we affirm for the reasons stated by the district court. Lowe v. Va. Dep't of Soc. Servs., No. 3:15-cv-00535-HEH (E.D. Va. Mar. 16, 2016; Apr. 13, 2016). However, because the district court dismissed Lowe's petition for lack of jurisdiction, we modify the dismissal order to reflect that the dismissal is without prejudice and, thus, does not qualify as a strike under 28 U.S.C. § 1915(g) (2012). See Moore v. Maricopa Cty. Sheriff's Office, 657 F.3d 890, 893 (9th Cir. 2011) (holding that dismissal for lack of subject matter jurisdiction does not qualify as strike); McLean v. United States, 566 F.3d 391, 397 (4th Cir. 2009) (holding that dismissal without prejudice for failure to state claim does not qualify as 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