

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 16-7216**

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MONTAVIUS ANTOINE JOHNSON,

Petitioner - Appellant,

v.

DAVID MITCHELL,

Respondent - Appellee.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, Chief District Judge. (3:16-cv-00003-FDW)

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Submitted: April 11, 2017

Decided: April 13, 2017

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Before SHEDD, DUNCAN, and AGEE, Circuit Judges.

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Dismissed and remanded by unpublished per curiam opinion.

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Montavious Antoine Johnson, Appellant Pro Se. Clarence Joe DelForge, III, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Montavius Antoine Johnson seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2012) petition as untimely. Although “[t]he parties . . . have not questioned our jurisdiction . . . , we have an independent obligation to verify the existence of appellate jurisdiction” and may exercise jurisdiction only over final orders and certain interlocutory and collateral orders. *Porter v. Zook*, 803 F.3d 694, 696 (4th Cir. 2015) (internal quotation marks omitted); *see* 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). “Ordinarily, a district court order is not final until it has resolved *all* claims as to all parties.” *Porter*, 803 F.3d at 696 (internal quotation marks omitted). “Regardless of the label given a district court decision, if it appears from the record that the district court has not adjudicated all of the issues in a case, then there is no final order.” *Id.*

In this case, the district court failed to consider Johnson's claims that his petition was timely pursuant to 28 U.S.C. § 2244(d)(1)(C), (D) (2012). Because the district court did not rule on those claims, it “never issued a final decision” in this matter. *Id.* at 699. Accordingly, we dismiss the appeal for lack of jurisdiction and remand to the district court for consideration of Johnson's remaining claims. We express no opinion on the ultimate disposition of those claims, and we deny Johnson's motions to expand the record, to appoint counsel, for discovery, for harmless error review, to amend his brief and motions, and to stay his appeal. 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 AND REMANDED*