

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6158

JERMAINE KEITH WALKER,

Plaintiff - Appellant,

v.

DAVID SCOTT LAUNDRY, Individual; CHESTERFIELD COUNTY, Municipal,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:17-cv-00020-HEH-RCY)

Submitted: August 30, 2017

Decided: September 7, 2017

Before WILKINSON, DUNCAN, and THACKER, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Jermaine Keith Walker, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jermaine Keith Walker appeals the district court's order dismissing his 42 U.S.C. § 1983 (2012) complaint for lack of jurisdiction and as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) (2012) and designating the dismissal as a strike for purposes of 28 U.S.C. § 1915(g) (2012). While the district court properly dismissed Walker's constitutional claims as frivolous, we find that his state law claims should have been dismissed for lack of subject matter jurisdiction, and that such dismissal should have been without prejudice. Moreover, neither a dismissal for lack of subject matter jurisdiction nor a dismissal without prejudice qualifies as a strike under § 1915(g). *See Moore v. Maricopa Cty. Sheriff's Office*, 657 F.3d 890, 895 (9th Cir. 2011) (dismissal for lack of subject matter jurisdiction); *McLean v. United States*, 566 F.3d 391, 397 (4th Cir. 2009) (dismissal without prejudice). Because only part of Walker's action was subject to dismissal on a ground enumerated under § 1915(g), the dismissal does not count as a strike. *See Tolbert v. Stevenson*, 635 F.3d 646, 651 (4th Cir. 2011).

Accordingly, we affirm the district court's judgment dismissing Walker's action. However, we modify the judgment to reflect that Walker's state law claims are dismissed without prejudice for lack of subject matter jurisdiction, and that the dismissal order is not a strike under § 1915(g). We grant leave to proceed in forma pauperis and deny Walker's motions for an emergency hearing and to show cause. 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