

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 17-7638**

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JACOB LEON MITCHELL,

Petitioner - Appellant,

v.

UNKNOWN,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, Senior District Judge. (1:17-cv-01030-TSE-IDD)

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Submitted: April 19, 2018

Decided: July 11, 2018

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Before GREGORY, Chief Judge, and THACKER and HARRIS, Circuit Judges.

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Dismissed and remanded by unpublished per curiam opinion.

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Jacob Leon Mitchell, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jacob Leon Mitchell seeks to appeal the district court's order dismissing without prejudice his 28 U.S.C. § 2254 (2012) petition. We dismiss the appeal as interlocutory and remand for further proceedings.

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 order from which Mitchell seeks to appeal does not “clearly preclude amendment,” Mitchell may be able to remedy the deficiencies identified by the district court by filing an amended petition. Accordingly, the district court's dismissal order is neither a final order nor an appealable interlocutory or collateral order. *See Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 623-24 (4th Cir. 2015); *Domino Sugar Corp. v. Sugar Workers Local Union 392*, 10 F.3d 1064, 1066-67 (4th Cir. 1993).

We therefore dismiss this appeal for lack of jurisdiction. *Goode*, 807 F.3d at 630. In *Goode*, we remanded to the district court with instructions to allow amendment of the complaint. *Id.* Here, however, the district court already has afforded Mitchell the opportunity to amend. Accordingly, we direct on remand that the district court, in its discretion, either afford Mitchell another opportunity to file an amended petition or dismiss the petition with prejudice, thereby rendering the dismissal order a final, appealable order. 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*