UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1166

TITO KNOX,

Plaintiff - Appellant,

v.

PLOWDEN, Public Defender,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry M. Herlong, Jr., Senior District Judge. (6:17-cv-02665-HMH)

Submitted: May 23, 2018 Decided: May 31, 2018

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

Dismissed and remanded by unpublished per curiam opinion.

Tito Lemont Knox, Appellant Pro Se.

PER CURIAM:

Tito Knox seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing without prejudice his 42 U.S.C. § 1983 (2012) action. 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 Knox seeks to appeal does "not clearly preclude amendment," Knox may be able to remedy the deficiencies identified by the district court by filing an amended complaint. *Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 630 (4th Cir. 2015). Accordingly, the district court's dismissal order is neither a final order nor an appealable interlocutory or collateral order. *See id.* at 623-24; *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. *See 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 has already afforded Knox the opportunity to amend. Accordingly, we direct on remand that the district court, in its discretion, either afford Knox another opportunity to file an amended complaint or dismiss the complaint 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