

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-6302

JOSHUA BOLEN,

Petitioner - Appellant,

v.

UNITED STATES DISTRICT COURT,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Loretta C. Biggs, District Judge. (1:17-cv-01088-LCB-JEP)

Submitted: July 6, 2018

Decided: August 30, 2018

Before KING, KEENAN, and HARRIS, Circuit Judges.

Dismissed and remanded by unpublished per curiam opinion.

Joshua Bolen, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Joshua Bolen seeks to appeal the district court's order adopting the magistrate judge's recommendation and dismissing without prejudice Bolen's 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 Bolen seeks to appeal does "not clearly preclude amendment," Bolen may be able to remedy the deficiencies identified by the district court by filing an amended petition. *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 Bolen the opportunity to amend. Accordingly, we direct on remand that the district court, in its discretion, either afford Bolen 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