

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6596

ROBERT LENEAR,

Petitioner - Appellant,

v.

HANOVER COUNTY PROBATION DEPARTMENT,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Anthony John Trenga, District Judge. (1:18-cv-00177-AJT-IDD)

Submitted: September 25, 2018

Decided: October 1, 2018

Before DUNCAN and WYNN, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Robert Lenear, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Lenear seeks to appeal the district court's order dismissing without prejudice his 28 U.S.C. § 2254 (2012) petition for failing to notify the court that his mailing address had changed. *See Fed. R. Civ. P. 41(b)*. After reviewing Lenear's handwritten petition, the court mailed an order to Lenear's address on file on March 14, 2018, directing Lenear to submit a § 2254 petition and an application to proceed in forma pauperis using standardized forms. The order also warned Lenear of the consequences of failing to comply with the court's order. *See Ballard v. Carlson*, 882 F.2d 93, 95-96 (4th Cir. 1989). When that order was returned as undeliverable, the district court concluded that Lenear failed to provide notice of a change of address, failed to comply with the March 14 order, and dismissed the action without prejudice.

We have reviewed the record and considered Lenear's assertion that he never changed his address and that sometimes he did not receive mail at his institution, and conclude that the March 14 order was returned to the district court due to circumstances beyond Lenear's control. We further conclude that Lenear should be given an opportunity to comply with the court's order and resubmit his § 2254 petition using the standardized form. Accordingly, we grant Lenear leave to proceed in forma pauperis, vacate the April 24, 2018, dismissal order, and remand the action to the district court with instructions to resend the March 14, 2018, order and the standardized forms to Lenear.*

* We note that Lenear reports that his address changed while this appeal was pending. Lenear should promptly inform the district court of his current address upon receipt of this opinion.

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.

VACATED AND REMANDED