

UNPUBLISHED

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

No. 18-6748

JIMMY ALLEN ROBERTS,

Plaintiff - Appellant,

v.

FRANK L. PERRY, Secretary of Prisons, North Carolina Department of Public
Safety, et al.,

Defendant - Appellee.

Appeal from the United States District Court for the Western District of North Carolina, at
Asheville. Frank D. Whitney, Chief District Judge. (1:17-cv-00063-FDW)

Submitted: September 13, 2018

Decided: September 18, 2018

Before NIEMEYER and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed and remanded by unpublished per curiam opinion.

Jimmy Allen Roberts, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jimmy Allen Roberts seeks to appeal from the district court's orders dismissing without prejudice his 42 U.S.C. § 1983 (2012) complaint and granting in part and denying in part his motion for an extension of time to file an amended complaint. 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 orders from which Roberts seeks to appeal do not “clearly preclude amendment,” Roberts may be able to remedy the deficiencies identified by the district court by filing an amended complaint. 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 Roberts the opportunity to amend. Accordingly, we direct on remand that the district court, in its discretion, either afford Roberts 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