

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 20-7049**

---

BRELAND E. BOONE,

Plaintiff - Appellant,

v.

ERIN MOORE, Probation Officer District #3,

Defendant - Appellee.

---

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T.S. Ellis, III, Senior District Judge. (1:19-cv-00766-TSE-MSN)

---

Submitted: March 8, 2021

Decided: April 20, 2021

---

Before AGEE, HARRIS, and QUATTLEBAUM, Circuit Judges.

---

Vacated and remanded by unpublished per curiam opinion.

---

Breland E. Boone, Appellant Pro Se.

---

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Breland Boone appeals the district court's order dismissing without prejudice his 42 U.S.C. § 1983 action against Erin Moore. The district court sua sponte dismissed the action pursuant to Fed. R. Civ. P. 4(m), finding that Boone had failed to timely effect service.

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own *after notice to the plaintiff*—must dismiss the action without prejudice against that defendant . . . . But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m) (emphasis added). “[A] district court abuses its discretion when . . . it dismisses a complaint *sua sponte* for lack of service without first giving notice to the plaintiff and providing an opportunity for [him] to show good cause for the failure to effect timely service.” *Meilleur v. Strong*, 682 F.3d 56, 61 (2d Cir. 2012); *see Shao v. Link Cargo (Taiwan) Ltd.*, 986 F.2d 700, 708 (4th Cir. 1993) (stating standard of review).

Here, although the district court informed Boone that failure to provide service within 90 days would lead to dismissal, we conclude that when the effort to serve Moore proved unsuccessful, the plain language of Rule 4(m) required the district court to provide notice to Boone and offering him an opportunity to show good cause before sua sponte dismissing the complaint. *Thompson v. Maldonado*, 309 F.3d 107, 110 (2nd Cir. 2002) (per curiam). Accordingly, we vacate the dismissal order and remand to the district court for further proceedings. 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