

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

LEONARD A. SMITH,

Plaintiff-Appellant.

v.

RALPH S. BEARDSLEY, Warden of
Turbeville Correctional Institution;

No. 00-6176

GEORGE MARTIN, III, Warden,
Regional Administrator; OFFICER
ARMSTRONG, Retired Deputy
Warden; SHERRY LOPEZ; DAVID
AREL,

Defendants-Appellees.

Appeal from the United States District Court
for the District of South Carolina, at Charleston.
Matthew J. Perry, Jr., Senior District Judge.
(CA-98-3715-2-10-AJ)

Submitted: June 30, 2000

Decided: July 18, 2000

Before WILLIAMS, TRAXLER, and KING, Circuit Judges.

Remanded by unpublished per curiam opinion.

COUNSEL

Leonard A. Smith, Appellant Pro Se. John Evans James, III, RICH-
ARDSON & JAMES, Sumter, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Leonard A. Smith appeals the district court's order accepting the magistrate judge's recommendation and dismissing this action for lack of prosecution pursuant to Fed. R. Civ. P. 41(b). The dismissal was based upon Smith's failure to respond to the motion for summary judgment filed by appellees.

Smith contends he did not receive any filings from the court indicating a motion for summary judgment was pending and a decision imminent. An examination of the record shows that all of the documents were sent to Smith by mail and that none were returned except the Roseboro notice which came back marked "RTS rel." We cannot tell for certain why the Roseboro notice was returned, and there is the distinct possibility that Smith never knew of it. The authority of the district court to enter judgment would be dependent upon service of the Roseboro notice upon Smith. Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975). Therefore, we must remand the case for the district court to make appropriate factual findings as to whether there was proper service of the relevant filings upon Smith and to proceed thereafter in accordance with those findings. We deny Smith's motions for production of documents and for an order compelling the clerk of court to comply with his motion for discovery. We dispense with oral argument because the facts and legal contentions are adequately presented in the written material before the court, and argument would not aid the decisional process.

REMANDED.