

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-6028

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAMES A. BUTLER,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Richard L. Williams, Senior District Judge. (CR-91-44)

Submitted: May 16, 2002

Decided: May 23, 2002

Before NIEMEYER, MICHAEL, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

James A. Butler, Appellant Pro Se. Gurney Wingate Grant, II, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

James A. Butler appeals from the district court's orders dismissing his Fed. R. Crim. P. 41(e) motion without prejudice and denying his motion for reconsideration. A dismissal without prejudice is a final order only if no amendment of the complaint could cure the defects in the plaintiff's case. Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). In ascertaining whether a dismissal without prejudice is reviewable in this court, we must determine whether Butler could save his motion by merely amending and refiling. See id.

Because Butler's motion was dismissed without prejudice, Butler could file either another Rule 41(e) motion, amended in accordance with the district court's instructions, and/or a motion for authorization from this court to file a successive 28 U.S.C.A. § 2255 (West Supp. 2001) motion attacking his underlying conviction. In fact, after Butler's motion was denied, he filed an amended Rule 41(e) motion in district court. Therefore, the district court's orders are not appealable. Accordingly, we deny premission to proceed in forma pauperis and dismiss the appeal for lack of jurisdiction under Domino Sugar. We dispense with oral argument, because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED