

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

THOMAS R. MORKE,
Plaintiff-Appellant,

v.

C. L. TYLER; M. PETERS; T. T.
REDMAN; L. M. SAUNDERS, Warden;
L. HUFFMAN, Warden; G. M.
JOHNSON; G. M. HINKLE, each in
his/her personal capacity; A. KELLY-
HARRISON, each in his/her personal
capacity; B. YANCEY, each in his/her
personal capacity; G. K.
WASHINGTON, each in his/her
personal capacity,
Defendants-Appellees.

No. 02-7276

Appeal from the United States District Court
for the Western District of Virginia, at Roanoke.
Samuel G. Wilson, Chief District Judge;
Glen E. Conrad, Magistrate Judge.
(CA-01-625-7)

Submitted: December 18, 2002

Decided: January 16, 2003

Before WILKINS and MOTZ, Circuit Judges, and
HAMILTON, Senior Judge.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Thomas R. Morke, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Thomas R. Morke filed a 42 U.S.C. § 1983 (2000) action which the district court dismissed without prejudice under 28 U.S.C. § 1915A(b)(1) (2000) for failure to state a claim upon which relief may be granted. Prior to the entry of that order, Morke filed an amended complaint. The magistrate judge construed the filing as a motion to amend and denied the motion, noting that the action had been closed and that Morke could file a new complaint if he so chose given that his complaint had been dismissed without prejudice.* The district court subsequently denied Morke's motion for reconsideration. Morke now appeals these two orders, claiming that he was entitled to file his amended complaint as a matter of course under Fed. R. Civ. P. 15(a) and that a new complaint would be barred by the statute of limitations.

"A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." Fed. R. Civ. P. 15(a). Here, no responsive pleading was filed; the district court announced its decision sua sponte. Prior to the entry of judgment, Morke moved to amend his § 1983 complaint. Under Fed. R. Civ. P. 15(a), Morke was entitled to file his amended complaint as a matter of right.

*The case was referred to a magistrate judge for all non-dispositive motions.

We therefore vacate the orders of the magistrate judge and the district court and remand with directions that the court reopen its judgment for consideration of Morke's amended complaint. In so doing, we express no opinion as to the merits of the amended complaint. We dispense with oral argument because the facts and legal arguments are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED