

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 02-7920**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAMES MICHAEL MORRIS,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Durham. Russell A. Eliason, Magistrate Judge. (CR-97-272, CR-98-57, CR-98-59, CR-98-62, CA-02-999)

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Submitted: April 17, 2003

Decided: April 22, 2003

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Before WIDENER, WILLIAMS, and MOTZ, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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James Michael Morris, Appellant Pro Se. Arnold L. Husser, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

James Michael Morris appeals from the magistrate judge's order dismissing without prejudice his "Motion for Modification of Sentence Pursuant to Title 18 U.S.C. § 3553(b)." The magistrate judge dismissed the action "without prejudice to petitioner filing a corrected motion on the proper § 2255 forms." See United States v. Morris, Nos. CR-97-272; CR-98-57; CR-98-59; CR-98-62; CA-02-999 (M.D.N.C. Nov. 20, 2002). Instead of heeding the magistrate judge's advice, Morris appealed. Because the dismissal order is without prejudice, it is not appealable under Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). A dismissal without prejudice is a final order only if "no amendment [to the complaint] could cure the defects in the plaintiff's case." Id. at 1067 (internal quotation and citation omitted). In this case, Morris may file an amended complaint in the district court by submitting it on the proper forms. Therefore, the order appealed from is an interlocutory, unappealable order. Id. at 1066-77. Accordingly, we dismiss the appeal for lack of jurisdiction and deny Morris' pending motion to remand. 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