

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7399

COMMONWEALTH OF VIRGINIA,

Plaintiff - Appellee,

versus

SIMON BANKS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (CR-04-249-1-MG)

Submitted: January 12, 2005

Decided: February 3, 2005

Before NIEMEYER, WILLIAMS, and TRAXLER, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Simon Banks, Appellant Pro Se. Elliott Casey, COMMONWEALTH'S ATTORNEY'S OFFICE, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Simon Banks appeals from the district court's order dismissing his petition for removal of a state criminal prosecution against him and denying his motion for reconsideration. While the district court properly concluded it lacked jurisdiction over the case, see City of Greenwood, MS. v. Peacock, 384 U.S. 808, 827-28 (1966), the proper disposition upon a determination of the lack of subject matter jurisdiction is to remand the case to the state court, rather than dismiss the action. See 28 U.S.C. §§ 1446(c)(3), (4), 1447(c) (2000); see, e.g., Virginia v. Wallace, 357 F.2d 105, 106 (4th Cir. 1966) (affirming district court order remanding criminal prosecution to state court).

Accordingly, we vacate the district court's dismissal order and the order denying reconsideration and remand this case to the district court with instructions to remand the case to the state court. 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.

VACATED AND REMANDED