

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-8040

THE STATE OF NORTH CAROLINA,

Plaintiff - Appellee,

v.

ANTHONY DUPREE, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Middle
District of North Carolina, at Greensboro. William L. Osteen,
Jr., Chief District Judge. (1:12-cr-00133-WO-1)

Submitted: April 4, 2013

Decided: May 22, 2013

Before SHEDD, DAVIS, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Anthony Dupree, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Anthony Dupree, Jr., appeals the district court's order remanding his state criminal prosecution to state court. We affirm.

In certain circumstances, a state criminal prosecution may be removed to federal district court. See 28 U.S.C. § 1443 (2012). Such removal is improper absent "a showing that the defendant is being denied rights guaranteed under a federal law providing for specific civil rights stated in terms of racial equality." South Carolina v. Moore, 447 F.2d 1067, 1070 (4th Cir. 1971) (internal quotation marks omitted) (quoting Johnson v. Mississippi, 421 U.S. 213, 219 (1975)); see also Georgia v. Rachel, 384 U.S. 780, 792 (1966). "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c) (2006).

We have reviewed the record and conclude that Dupree has not made the requisite showing for removal under § 1443.* Thus, the district court lacked subject matter jurisdiction over

* Although Dupree also cited 28 U.S.C. § 1446 as a basis for removal, this statute does not apply to him. At the time Dupree filed his notice of removal, § 1446 no longer provided procedures for removal of criminal prosecutions, other than certain prosecutions of United States officers and agencies. See 28 U.S.C.A. § 1446 (West Supp. 2012). For the same reason, Dupree is not entitled to an evidentiary hearing.

the removed prosecution and appropriately remanded the case to state court. Accordingly, although we grant leave to appeal in forma pauperis, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED