

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 15-1549**

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CLARK PHILOGENE,

Plaintiff - Appellant,

v.

IA2, INC.,

Defendant - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, Senior District Judge. (1:15-cv-00180-TSE-IDD)

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Submitted: September 17, 2015

Decided: October 2, 2015

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Before NIEMEYER and THACKER, Circuit Judges, and DAVIS, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Clark Philogene, Appellant Pro Se. Joon Hwang, Elizabeth Anne Lalik, LITTLER MENDELSON PC, McLean, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Clark Philogene appeals the district court's order dismissing with prejudice Philogene's civil complaint in which he asserted employment discrimination claims. The district court found that it lacked subject-matter jurisdiction over the complaint, because Philogene "failed to file a charge of discrimination as required by 42 U.S.C. § 2000e-5(e)(1) within the statutory period," and failed to establish grounds for equitably tolling the applicable 300-day period for filing such a charge. See Philogene v. IA2, Inc., No. 1:15-cv-00180-TSE-IDD, slip op. at 2-3 (E.D. Va. Apr. 24, 2015).

We have previously observed that the "failure to timely file an EEOC charge . . . does not deprive the district court of subject matter jurisdiction." See Hentosh v. Old Dominion Univ., 767 F.3d 413, 417 (4th Cir. 2014). But we may affirm on any ground apparent in the record. See United States ex rel. Drakeford v. Tuomey, 792 F.3d 364, 375 (4th Cir. 2015). And, after review, we agree that each act of alleged discrimination set forth in the complaint took place more than 300 days before Philogene filed his EEOC charge. Accordingly, Philogene's claims are time-barred, see Agolli v. Office Depot, Inc., 548 F. App'x 871, 875 (4th Cir. 2013), and we affirm the district court's order on that basis. 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