

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 96-6381**

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ANDERSON L. TERRY,

Plaintiff - Appellant,

versus

LYNN PHILLIPS; JOHN DOE, various employees at  
Central Prison,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern Dis-  
trict of North Carolina, at Raleigh. James C. Fox, Chief District  
Judge. (CA-95-881-5-F)

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Submitted: June 28, 1996

Decided: July 23, 1996

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Before HALL and LUTTIG, Circuit Judges, and PHILLIPS, Senior  
Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Anderson L. Terry, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant appeals from the district court's order dismissing without prejudice his 42 U.S.C. § 1983 (1988) complaint. The district court's dismissal without prejudice is not appealable. See Domino Sugar Corp. v. Sugar Workers' Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). A dismissal without prejudice could be final if "no amendment [to the complaint] could cure defects in the plaintiff's case." Id. at 1067. In ascertaining whether a dismissal without prejudice is reviewable in this court, the court must determine "whether the plaintiff could save his action by merely amending the complaint." Id. at 1066-67.

Because Appellant could have amended his complaint to assert some claims, the dismissal order is not appealable. Accordingly, we dismiss the appeal for lack of jurisdiction. We deny Appellant's motion to stay as moot and 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