

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 98-6890**

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CLARENCE MERICA,

Plaintiff - Appellant,

versus

DONALD W. FARLEY; ROCKINGHAM COUNTY, VIRGINIA;  
WILLIAM MEADOWS, Lieutenant; FIRST SERGEANT  
WALTON; ROCKINGHAM-HARRISON REGIONAL JAIL,

Defendants - Appellees.

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Appeal from the United States District Court for the Western  
District of Virginia, at Roanoke. Samuel G. Wilson, Chief District  
Judge. (CA-98-345-R)

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Submitted: September 30, 1998

Decided: October 20, 1998

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Before ERVIN, LUTTIG, and WILLIAMS, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Clarence Merica, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Clarence Merica appeals from the district court's order dismissing without prejudice his 42 U.S.C.A. § 1983 (West Supp. 1998) 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 is a final order only if "no amendment [in the complaint] could cure the defects in the plaintiff's case.'" Id. at 1067 (quoting Coniston Corp. v. Village of Hoffman Estates, 844 F.2d 461, 463 (7th Cir. 1988)). 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 his complaint." Domino Sugar, 10 F.3d at 1066-67. In this case, Merica may move in the district court to reopen his case and to file an amended complaint specifically alleging facts sufficient to state a claim under 42 U.S.C.A. § 1983. Therefore, the dismissal order is not appealable. Accordingly, we dismiss the appeal for lack of jurisdiction. 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