

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-7331

JOHN E. PIERCE, JR.,

Petitioner - Appellant,

versus

DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, District Judge. (CA-98-534)

Submitted: January 5, 1999

Decided: January 26, 1999

Before NIEMEYER, WILLIAMS, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

John E. Pierce, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

John E. Pierce, Jr., appeals from the district court's order dismissing his § 2254 petition. The district court dismissed the petition without prejudice because Pierce failed to demonstrate that he had exhausted his available state court remedies. This Court may exercise jurisdiction only over final orders. See 28 U.S.C.A. § 1291 (West 1993). A dismissal without prejudice is final if "no amendment [to the petition] could cure the defects in the [petitioner's] case." Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1067 (4th Cir. 1993). Thus, in ascertaining whether a dismissal without prejudice is reviewable in this Court, we must determine "whether the [petitioner] could save his action by merely amending the [petition]." Id. at 1066-67. Because Pierce can save this action by amending his petition to show that he has exhausted his state remedies, the district court's order is not an appealable final order. Accordingly, we deny a certificate of appealability and 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