

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-7397

QUENTIN MCLEAN,

Plaintiff - Appellant,

versus

MEMBERS OF THE STATE BOARD OF CORRECTIONS; DIRECTOR OF HEALTHCARE SERVICES, Contracted with the Virginia Department; UNKNOWN AGENCIES, Agents, Agencies, servants and other persons unknown to the plaintiff at this time, but reserves the right to amend his suit to include as indicated when plaintiff becomes aware of their capacities,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Samuel G. Wilson, Chief District Judge. (CA-99-628-7)

Submitted: December 16, 1999

Decided: December 30, 1999

Before MURNAGHAN and MOTZ, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Quentin McLean, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Quentin McLean appeals the district court's order dismissing without prejudice his 42 U.S.C.A. § 1983 (West Supp. 1999) complaint, pursuant to 28 U.S.C.A. § 1915(g) (West Supp. 1999), and denying reconsideration of that order under Fed. R. Civ. P. 59(e). We have reviewed the record and the district court's opinion and orders and find the district court's order dismissing McLean's complaint without prejudice is not an appealable order. See Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). We therefore dismiss McLean's appeal as to both orders.

In Domino Sugar, we held that the dismissal of a complaint without prejudice may not be appealed unless the district court clearly indicates that the defects in the plaintiff's case cannot be cured by amending and refileing the complaint. The district court in this case left open the possibility that McLean could amend the allegations in his complaint or plead new facts that could establish that he is in imminent danger of serious physical harm under § 1915(g).

Accordingly, while we construe McLean's petition for review of the denial of his motion for reconsideration as a renewed notice of appeal and grant it as such, we dismiss the appeal and deny McLean's motion for emergency medical relief. We also deny McLean's petition for writ of mandamus for failure to allege

circumstances justifying invocation of this extraordinary writ and his motion to extend time to file a response. We also deny McLean's motions for oral argument and to participate in 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