

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 00-7185**

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CARLTON RAY MITCHELL, JR.,

Plaintiff - Appellant,

versus

SERGEANT ROOKS; L. ELLIS, Correctional Officer;  
CORRECTIONAL OFFICER LUCAS,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Jerome B. Friedman, District Judge. (CA-167-2)

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Submitted: October 26, 2000

Decided: November 2, 2000

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Before WIDENER, MICHAEL, and KING, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Carlton Ray Mitchell, Jr., Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Carlton Ray Mitchell, Jr., appeals the district court's order dismissing without prejudice his complaint filed under 42 U.S.C.A. § 1983 (West Supp. 2000), for failure to comply with a court order to prepay the filing fee or submit the forms necessary to pay the fee in installments.\* Generally, dismissals without prejudice are not appealable. See Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066 (4th Cir. 1993). We find, however, that the district court's order is a final, appealable order because the defect in Mitchell's complaint must be cured by something more than an amendment to the complaint. See id. at 1066-67.

In considering Mitchell's appeal, we have reviewed the record, the district court's opinion, and Mitchell's informal appellate brief filed in this court. Because Mitchell failed to challenge on appeal the basis for the district court's ruling, he has failed to preserve any issue for our review. See 4th Cir. R. 34(b). Accordingly, we affirm on the reasoning of the district court. See Mitchell v. Rooks, No. CA-167-2 (E.D. Va. June 26, 2000). We dispense with oral argument because the facts and legal contentions

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\* Mitchell filed his notice of appeal beyond the 30-day appeal period set forth in Fed. R. App. P. 4(a)(1). Because, however, the district court did not enter its order on a separate document, as required by Fed. R. Civ. P. 58, the appeal period never began to run, and Mitchell's appeal may not be dismissed as untimely. See Bankers Trust Co. v. Mallis, 435 U.S. 381, 384-85 (1978).

are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED