

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7095

DANIEL DENO RICHARDSON,

Plaintiff - Appellant,

versus

BERKELEY COUNTY DETENTION CENTER,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Patrick Michael Duffy, District Judge. (CA-02-1261-9-23)

Submitted: November 18, 2002

Decided: December 11, 2002

Before WILKINS, LUTTIG, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Daniel Deno Richardson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Daniel Deno Richardson seeks to appeal the district court's order dismissing without prejudice his 42 U.S.C. § 1983 (2000) complaint. Richardson's case was referred to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (1994). The magistrate judge recommended that Richardson's complaint be dismissed without prejudice and advised Richardson that failure to file timely specific written objections to this recommendation could waive further judicial review, including appellate review if the recommendation is accepted by the district court. The district court adopted the magistrate judge's recommendation given Richardson's apparent failure to respond to the magistrate judge's report and recommendation. The record discloses that Richardson's response to the magistrate judge's report was filed in the district court the same day the district court entered its order dismissing his complaint without prejudice. On appeal, Richardson contends that his objections were timely filed.

Assuming, without deciding, that Richardson's response was timely filed and that his objections to the magistrate judge's report were sufficiently specific, we nevertheless find that this appeal is interlocutory. The district court dismissed Richardson's complaint without prejudice. Because Richardson may be able to proceed with this action by amending his complaint, the dismissal order is not final and thus is not subject to appellate review.

See Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993).

We therefore dismiss the appeal. 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