

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-6872

BERLINDA L. CRADDOCK, a/k/a Jackie Paige,

Petitioner - Appellant,

versus

RONALD J. ANGELONE, Director of the Virginia
Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern Dis-
trict of Virginia, at Norfolk. Henry C. Morgan, Jr., District
Judge. (CA-95-448-2)

Submitted: November 21, 1996

Decided: December 4, 1996

Before HALL, WILKINS, and HAMILTON, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Berlinda L. Craddock, Appellant Pro Se. Linwood Theodore Wells,
Jr., Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant seeks to appeal from the district court's order dismissing without prejudice her petition filed pursuant to 28 U.S.C. § 2254 (1994), amended by Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214. 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 could be final if "no amendment [to the petition] could cure defects in the plaintiff's case." Id. at 1067. In ascertaining whether a dismissal without prejudice is reviewable in this court, the court must determine "whether the [petitioner] could save his action by merely amending the [petition]." Id. at 1066-67.

Because Appellant could have amended her petition to raise only the exhausted claims and thereby cured the defects in her petition, the dismissal order is not appealable. 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