

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6594

JAMES A. MARTIN,

Plaintiff - Appellant,

v.

WARDEN OF FCI HAZELTON AND UNKNOWNNS; WARDEN OF USP HAZELTON
AND UNKNOWNNS,

Defendants - Appellees.

Appeal from the United States District Court for the Northern District of West Virginia, at
Martinsburg. Gina M. Groh, District Judge. (3:22-cv-00013-GMG-RWT)

Submitted: January 18, 2024

Decided: February 8, 2024

Before WILKINSON, NIEMEYER, and GREGORY, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

James A. Martin, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James A. Martin, a federal prisoner, appeals the district court's order dismissing for failure to prosecute Martin's action filed pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). We vacate and remand.

On March 15, 2022, the magistrate judge issued an order directing Martin to pay a partial initial filing fee and warning that failure to pay the fee within 28 days could result in dismissal of his action without prejudice. Martin did not pay the filing fee by the deadline, prompting the district court to dismiss Martin's action on the ground that he had failed to comply with the magistrate judge's order. *See* Fed. R. Civ. P. 41(b). In its dismissal order, the district court noted that, according to a return receipt, Martin received the magistrate judge's order regarding the filing fee on March 21. However, in his notice of appeal, and again on appeal, Martin claimed that he never received the magistrate judge's order. Further, the return receipt cited by the district court reflects that Martin's prison facility received the magistrate judge's order, but it does not indicate whether prison staff forwarded the order to Martin.

Because the district court did not have an opportunity to resolve the factual question of whether Martin received timely notice of the magistrate judge's order, we are unable to determine whether the court properly exercised its discretion in dismissing the action under Rule 41(b). *See Attkisson v. Holder*, 925 F.3d 606, 620, 625 (4th Cir. 2019) (providing standard of review and listing factors relevant to Rule 41(b) dismissal). Accordingly, we deny Martin's pending motions, vacate the district court's order, and remand for further proceedings.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED