

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7577

DONALD HERRINGTON,

Plaintiff - Appellant,

v.

HAROLD CLARKE, Director of the Department of Corrections,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Anthony John Trenga, Senior District Judge. (1:16-cv-00412-AJT-MSN)

Submitted: July 29, 2021

Decided: August 20, 2021

Before KING, WYNN, and RICHARDSON, Circuit Judges.

Dismissed and remanded by unpublished per curiam opinion.

Donald Herrington, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Donald Herrington seeks to appeal the district court's order after remand dismissing his 28 U.S.C. § 2254 petition. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). "Ordinarily, a district court order is not final until it has resolved *all* claims as to all parties." *Porter v. Zook*, 803 F.3d 694, 696 (4th Cir. 2015) (internal quotation marks omitted).

Our review of the record reveals that the district court did not adjudicate one claim alleged in Herrington's § 2254 petition and that the unadjudicated claim was included in the claims that we previously remanded to the district court. *Id.* at 696-97. Specifically, the court did not address Herrington's claim that his state appellate counsel performed deficiently by failing to argue that Herrington was denied an impartial jury when the jury was informed of the sentence range for some of the offenses during the guilt phase of trial. We thus conclude that the order Herrington seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we dismiss the appeal for lack of jurisdiction and remand to the district court for consideration of the unresolved claim.* *Id.* at 699; *cf. Hixson v. Moran*, 1 F.4th 297, 301-02 (4th Cir. 2021) (ruling that *Porter* did

* We acknowledge that, after the prior remand, the district court performed an exhaustive review of the state court record and issued a 47-page opinion explaining its reasoning for dismissing Herrington's § 2254 petition. Our disposition of this appeal is in no way a criticism of the district court's painstaking efforts in these proceedings.

not require remand for further consideration of two-component claim where district court acknowledged and resolved both components).

We also grant Herrington's motion to amend his informal brief. 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.

DISMISSED AND REMANDED