

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 22-7262

JONATHAN A. HARRIS, SR.,**Plaintiff - Appellant,****v.****J. SADLER, Human Service Administrator; MICHAEL D. BROOKS, Ordering Physician/Attending Physician; S. HILL, L.P.N.; ARMOR MEDICAL SERVICES; BETH CABELL, Warden of Sussex II State Prison; HAROLD W. CLARKE, Director; A. DAVID ROBINSON, Chief of Operations; FREDERICK SCHILLING, Director of Health Services; VINCE DALTON, M.D.; SMITH, Physical Therapist; ANITA CRITTON, Grievance Coordinator; P. LAMPMEN, H.S.A.,****Defendants - Appellees.**

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L. Wright Allen, District Judge. (2:20-cv-00451-AWA-RJK)

Submitted: September 28, 2023**Decided: October 2, 2023**

Before NIEMEYER, THACKER, and RUSHING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Jonathan A. Harris, Sr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jonathan A. Harris, Sr., appeals the district court's dismissal of his complaint without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and comply with a court order.* We have reviewed the record and discern no reversible error. Accordingly, we affirm the district court's order. *Harris v. Sadler*, No. 2:20-cv-00451-AWA-RJK (E.D. Va. Oct. 3, 2022). 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.

AFFIRMED

* Because the district court did not afford Harris leave to amend, the dismissal order, although without prejudice, is a final, appealable order. *See Britt v. DeJoy*, 45 F.4th 790, 796 (4th Cir. 2022) (en banc) (order).

FILED: December 18, 2023

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Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Thacker, and Judge Rushing.

For the Court

/s/ Nwamaka Anowi, Clerk

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

JONATHAN A. HARRIS, SR.,

Plaintiff,

v.

ACTION NO. 2:20cv451

J. SADLER, *et al.*,

Defendants.

DISMISSAL ORDER

Plaintiff, a Virginia inmate, submitted this *pro se* action pursuant to 42 U.S.C. § 1983 to redress alleged violations of his constitutional rights. Am. Compl., ECF No. 8.

By Order entered on August 26, 2022, the Court reviewed Plaintiff's Amended Complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A. Order at 3–4, ECF No. 11. The Court indicated that, “upon review of Plaintiff's Amended Complaint, the Court [wa]s unable to determine whether Plaintiff ha[d] stated a cognizable claim upon which relief may be granted.” *Id.* at 3. The Court noted that “Plaintiff's Amended Complaint fail[ed] to provide each Defendant with fair notice of the facts and legal basis upon which his or her liability rests.” *Id.* at 4. In deference to Plaintiff's *pro se* status, the Court provided Plaintiff with an opportunity to clarify his claims by filing a Second Amended Complaint. *See id.* Specifically, the Court ordered Plaintiff to file a Second Amended Complaint that complied with the instructions set forth in the August 26, 2022 Order within twenty-one days. *Id.* at 4–5. The Court advised Plaintiff

that if he failed to comply with the terms of the August 26, 2022 Order, the Court would dismiss this action without prejudice. *Id.* at 6 (citing Fed. R. Civ. P. 41(b)).

More than twenty-one days have passed since the entry of the Court's August 26, 2022 Order, and the Court has received no response from Plaintiff. Plaintiff's actions, or lack thereof, constitute a failure to prosecute this action and a failure to comply with the terms of an Order of this Court. *See* Fed. R. Civ. P. 41(b). Accordingly, this action is **DISMISSED without prejudice**. Plaintiff is CAUTIONED that the statute of limitations continues to run.

Plaintiff may appeal from this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. The written notice must be received by the Clerk within thirty days of the date of entry of this Dismissal Order. If Plaintiff wishes to proceed *in forma pauperis* on appeal, the application to proceed *in forma pauperis* shall be submitted to the Clerk of the United States Court of Appeals, Fourth Circuit, 1100 E. Main Street, Richmond, Virginia 23219.

The Clerk is **DIRECTED** to please send a copy of this Dismissal Order to Plaintiff Jonathan A. Harris, Sr.¹

¹ The Clerk is **FURTHER DIRECTED** to docket this Dismissal Order in the Court's Case Management and Electronic Case Filing System pursuant to the Court's formal electronic service agreement with the Attorney General's Office for the Commonwealth of Virginia.

IT IS SO ORDERED.

Norfolk, Virginia
October 3, 2022

/s/
Arenda L. Wright Allen
United States District Judge