

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12131
Non-Argument Calendar

SHAUN PATRICK STEWART,

Plaintiff-Appellant,

versus

CAPTAIN RIED,

Individual and Official capacity,

FNU LOCHERIE,

Captain - Individual and Official Capacity,

FNU STRICKLAND,

Lieutenant - Individual and Official Capacity,

FNU REALE,

Deputy - Individual and Official Capacity,

MARY P. HATCHER,

Judge - Individual and Official Capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:23-cv-00607-SPC-PRL

Before JORDAN, BRANCH, and KIDD, Circuit Judges.

PER CURIAM:

Shaun Stewart appeals the dismissal of his *pro se* civil rights complaint for failure to comply with the district court's order to file an amended complaint. He argues, among other things, that the district court erred in concluding that he failed to comply because his amended complaint was signed and postmarked prior to the dismissal order, but not docketed until after the dismissal order was entered.¹ After review and considering the totality of the

¹ After Stewart filed his initial brief in this case, he filed a motion seeking permission to file an amended brief, along with a copy of his amended brief, and a motion for appointment of counsel. He explains that at the time he filed his initial brief, he was in a Florida mental health facility without access to the record, a computer, or a law library and was unable to include relevant legal authorities. In light of the circumstances, his *pro se* status, and the fact that there will be no prejudice to the opposing party because the appellees did not appear, we GRANT his motion to amend. Thus, all references in this opinion to his arguments are to the amended brief that he filed with the motion to amend.

However, we DENY the motion for appointment of counsel because Stewart has not shown that counsel is necessary for this appeal. *See Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993) (explaining that appointment of counsel in a civil case is “a privilege justified only by exceptional circumstances, such as the presence of facts and legal issues which are so novel

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circumstances, we conclude that the amended complaint was filed prior to the dismissal order. Therefore, we vacate the dismissal order and remand to the district court for further proceedings.

I. Background

In 2023, Shaun Stewart filed a *pro se* civil rights complaint against several employees of Florida’s Sumter County Detention Center and Judge Hatcher, a Florida state court judge, asserting claims under “42 U.S.C. §§ 1983, 1985(2) [and] (3), 1986, 1988, [and] 1981.” He alleged that he had been “target[ed] by the head of the largest mafia in the state” who with the help of “select state actors” had conspired to frame him for an unspecified crime, kidnap him by having him arrested, and keep him unlawfully jailed and tortured. He alleged that Judge Hatcher participated in the conspiracy and coverup by allowing his illegal prosecution and incarceration. He further generally alleged that jail staff had been denying him the right to make copies of legal documents, seizing the tools (stamps, erasers, and pencils) necessary to work on his criminal and civil filings, defaming him by telling other inmates he was mentally ill, and unlawfully subjecting him to “torture” and retaliation.

In January 2024, the district court screened the complaint, pursuant to 28 U.S.C. § 1915(e)(2)(B),² and dismissed it without

or complex as to require the assistance of a trained practitioner” (alteration adopted) (quotations omitted)).

² Section 1915(e)(2)(B) provides that, when as here, the plaintiff is proceeding *in forma pauperis*, the district court must dismiss the case “at any time” if,

prejudice for failure to state a claim upon which relief could be granted, while simultaneously granting Stewart leave to amend within 21 days.³ Thereafter, on February 15, 2024, the district court granted Stewart an extension of time to file an amended complaint, giving him until March 8, 2024, to file the amended complaint. This order stated that “failure to timely file an amended complaint will result in the dismissal of this action.”

On February 29, 2024, Stewart sent the district court a notice that he had recently been transferred to a different facility and asking the court to resend any mail from the last two to three weeks, because due to the transfer he had been unable to receive mail. The district court resent the February 15 order to Stewart on March 6, 2024, two days before the filing deadline.

On April 12, 2024, the district court dismissed the case for failure to comply with its prior order and file an amended complaint.⁴ However, four days after entry of the judgment, the

among other grounds, it determines that the complaint “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

³ In the initial order dismissing the complaint without prejudice and granting leave to amend, the district court set forth the applicable law for each purported claim in the complaint and explained in detail why Stewart’s allegations as drafted were insufficient to state a claim.

⁴ The district court’s order did not state whether the dismissal was with or without prejudice. However, Federal Rule of Civil Procedure 41(b) provides that, unless the dismissal order states otherwise, a dismissal for failure to comply with a court order “operates as an adjudication on the merits,” which is in effect a dismissal with prejudice. Fed. R. Civ. P. 41(b).

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district court docketed an amended complaint from Stewart. Stewart stated in this amended complaint that he did not receive the district court's February order directing him to file an amended complaint until March 11, 2024, because he had been transferred to a different facility. Upon learning of the order, he signed and submitted the amended complaint the very next day. The mailing envelope was dated March 15, 2024.⁵ It does not appear that the district court took any action on the amended complaint after docketing it. This appeal followed.

II. Discussion

Stewart argues that the district court erred in dismissing his complaint for failure to comply with its prior order when he filed an amended complaint prior to the dismissal order. Based on the unique circumstances of this case, we agree.

Where a more carefully drafted complaint might state a claim, the district court abuses its discretion if it does not provide a *pro se* plaintiff at least one opportunity to amend before the court dismisses the action. *Woldeab v. DeKalb Cnty. Bd. of Educ.*, 885 F.3d 1289, 1291–92 (11th Cir. 2018). A district court may dismiss an action for failure to comply with a court order. *See Fed. R. Civ. P.* 41(b). We review a district court's decision to dismiss a complaint for the plaintiff's failure to follow court orders for an abuse of discretion. *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989).

⁵ It is unclear why the district court did not receive this mailing for over a month.

“While dismissal is an extraordinary remedy, dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.” *Id.*

Here, the district court gave Stewart one opportunity as required to amend his *pro se* complaint to state a claim. *Woldeab*, 885 F.3d at 1291–92. However, it is undisputed that Stewart was transferred to a different facility, and he did not receive the February 15 order until after the district court mailed it to his new facility on March 6, 2024.⁶ Stewart received the court’s March 6 mailing on March 11, 2024—three days after the March 8 deadline for filing an amended complaint. He then promptly prepared and mailed an amended complaint the very next day. Pursuant to the mailbox rule, the amended complaint was deemed filed on March 12, 2024, the date that he signed the pleading. *See Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (holding that, under the prison mailbox rule, a prisoner’s pleading is deemed filed when executed and delivered to prison authorities for mailing); *Jeffries v. United States*, 748 F.3d 1310, 1314 (11th Cir. 2014) (stating that “[a]bsent evidence to the contrary, [the Court] assume[s] that a prisoner delivered a filing to prison authorities on the date that he signed it”). The mailing envelope was dated a few days later on March 15, 2024. It is unknown why it took so long for the filing to be received and docketed by the district court. However, because

⁶ We refer to this fact as “undisputed” because all we have before us are Stewart’s filings and the relevant docket information, which supports his timeline. We do not have any response from the appellees.

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under the mailbox rule Stewart technically filed his amended complaint prior to entry of the dismissal order, his case cannot be dismissed for failure to file an amended complaint.⁷ Accordingly, we vacate the dismissal order, and we remand for further proceedings.⁸

VACATED AND REMANDED.

⁷ We recognize that Stewart's amended complaint was not technically "timely" because it was filed 4 days after the March 8, 2024, deadline. However, this fact is not dispositive because the district court did not dismiss the case until April 12, 2024, and the dismissal order was based solely on Stewart's failure to file an amended complaint "[t]o date." The district court is free on remand to consider whether dismissal is warranted because the amended complaint was untimely provided that it gives Stewart an opportunity to respond to the timeliness issue.

⁸ Because we vacate the dismissal order and remand for further proceedings, we find it unnecessary to reach the other arguments Stewart raises on appeal.