

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-1084

BARRY NELSON THOMAS, JR.,

Plaintiff - Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:10-cv-00897-HEH)

Submitted: June 30, 2011

Decided: July 5, 2011

Before WILKINSON, DUNCAN, and WYNN, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Barry Nelson Thomas, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Barry Nelson Thomas, Jr., appeals the district court's order dismissing his civil complaint for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) (2006), and remanding his traffic court proceedings to state court. We affirm in part, and dismiss in part for lack of jurisdiction.

We first reject Thomas' challenge to the constitutionality of § 1915(e)(2)(B)(ii). See generally Vanderberg v. Donaldson, 259 F.3d 1321, 1232-24 (11th Cir. 2001) (holding that § 1915(e)(2)(B)(ii) does not violate the Equal Protection Clause because it is "rationally related to the government's legitimate interests in deterring meritless claims and conserving judicial resources"). Accordingly, we affirm the district court's order to the extent that it dismissed Thomas' complaint, which was filed in forma pauperis, for failure to state a claim.

In the same order, the district court found it lacked jurisdiction over the Virginia traffic court case that Thomas attempted to remove to federal court, see 28 U.S.C. § 1441 (2006), and remanded those proceedings to the state court. Because the district court remanded the case on grounds provided for in 28 U.S.C. § 1447(c) (2006) (defects in removal procedure or lack of subject matter jurisdiction), the remand order is not appealable under 28 U.S.C. § 1447(d) (2006). We therefore

dismiss the appeal in part for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(c), (d); Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 711-12 (1996); Ellenburg v. Spartan Motors Chassis, Inc., 519 F.3d 192, 196 (4th Cir. 2008). 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.

AFFIRMED IN PART;
DISMISSED IN PART