

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 03-6318

---

RONALD LEE ROBERTSON,

Plaintiff - Appellant,

versus

SCOTT NIVENS, Probation & Parole #13; A. M.  
COLLINS, Superintendent, Appalachian  
Correctional Center; RONALD WUERGLER, Major;  
KIM TYREE, Nurse,

Defendants - Appellees.

---

Appeal from the United States District Court for the Western  
District of Virginia, at Roanoke. Jackson L. Kiser, Senior District  
Judge. (CA-02-778-7)

---

Submitted: July 16, 2003

Decided: September 16, 2003

---

Before NIEMEYER, MICHAEL, and KING, Circuit Judges.

---

Affirmed as modified by unpublished per curiam opinion.

---

Ronald Lee Robertson, Appellant Pro Se. Richard Carson Vorhis,  
OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for  
Appellees.

---

Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Ronald Lee Robertson appeals the district court's judgment granting summary judgment to the Appellees Nivens, Collins and Wuerghler and dismissing the complaint as to Appellee Tyree. We have reviewed the record and find no reversible error relating to the grant of summary judgment. Accordingly, we affirm the grant of summary judgment for the reasons stated by the district court. Robertson v. Nivens, No. CA-02-778-7 (W.D. Va. Feb. 6, 2003). As for the dismissal of the action for failing to properly serve process on Appellee Tyree, we have reviewed the record and find no reversible error. We note, however, that dismissal of the action should have been without prejudice. See Mendez v. Elliot, 45 F.3d 75, 78 (4th Cir. 1995). Accordingly, we affirm the court's dismissal of Tyree as modified to reflect dismissal without prejudice. 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 AS MODIFIED