

UNPUBLISHED  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

JEROME ANTHONY HOWARD,  
*Plaintiff-Appellant,*

v.

MR. SMITH, Physician at Wallens  
Ridge State Prison; S.K. YOUNG,  
Warden at Wallens Ridge State  
Prison; Ms. McCURRY, R.N. at  
Wallens Ridge State Prison; JOHN  
DOE, Corrections Officer at Wallens  
Ridge State Prison,  
*Defendants-Appellees.*

No. 03-6777

Appeal from the United States District Court  
for the Western District of Virginia, at Roanoke.  
James C. Turk, Senior District Judge.  
(CA-03-144-7)

Submitted: November 21, 2003

Decided: January 28, 2004

Before NIEMEYER, MOTZ, and GREGORY, Circuit Judges.

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Affirmed in part, vacated and remanded in part by unpublished per curiam opinion.

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**COUNSEL**

Jerome Anthony Howard, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

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### OPINION

#### PER CURIAM:

Jerome Anthony Howard appeals the order of the district court dismissing without prejudice pursuant to 28 U.S.C. § 1915A (2000) his suit under 42 U.S.C. § 1983 (2000) for failure to state a claim.\* This court reviews de novo a district court's § 1915A dismissal. *De'Lonta v. Angelone*, 330 F.3d 630, 633 (4th Cir. 2003); *Veney v. Wyche*, 293 F.3d 726, 730 (4th Cir. 2002).

Howard's claims accruing more than two years before he filed suit are barred by the applicable statute of limitations. As to these claims, we affirm on the reasoning of the district court. *See Howard v. Smith*, No. 7:03-CV-00144 (W.D. Va. Apr. 29, 2003).

Turning to Howard's remaining claims, we cannot conclude "beyond doubt" that Howard's complaint fails to state a claim. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). Howard asserts that he was housed on the second tier notwithstanding his clubbed foot, which made traversing the stairs hazardous. He also contended that after a fall in which he broke or dislodged a bone, the prison doctor did not examine him for eleven days, and the examination consisted only of viewing Howard through a window in his cell door. Liberally construing Howard's complaint, we find that he has alleged that prison officials were deliberately indifferent to an objectively serious medical need sufficient to preclude summary dismissal under § 1915A. *See Johnson v. Quinones*, 145 F.3d 164, 167 (4th Cir. 1998) (providing standard).

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\*Although a dismissal without prejudice is ordinarily not an appealable order, *see Domino Sugar Corp. v. Sugar Workers Local Union 392*, 10 F.3d 1064, 1066-67 (4th Cir. 1993), the applicable statute of limitations period has passed. *See Va. Code Ann. § 8.01-243(a)* (Michie 2000). Thus, the order is effectively a final order.

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Accordingly, we vacate the district court's order as to the timely filed claims and remand for further proceedings. We express no opinion as to the proper ultimate disposition of Howard's claims. 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;  
VACATED AND REMANDED IN PART*