

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6881

JAMES D. LYONS,

Plaintiff - Appellant,

versus

ARTHUR F. BEELER; HARLEY G. LAPPIN; HARRELL
WATTS; KATHLEEN HAWK-SAWYER,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern
District of North Carolina, at Raleigh. James C. Fox, Senior
District Judge. (CA-02-467-5-F3)

Submitted: October 15, 2004

Decided: December 6, 2004

Before WIDENER, NIEMEYER, and TRAXLER, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam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

Neal Lawrence Walters, Charlottesville, Virginia, for Appellant.
Frank DeArmon Whitney, United States Attorney, Rudolf A. Renfer,
Jr., Anne Margaret Hayes, Assistant United States Attorneys,
Raleigh, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

James D. Lyons appeals the district court's order denying relief on his complaint filed pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). The Government has moved to dismiss on the basis that the sole claim advanced by Lyons' counsel is rendered moot by amendments to the federal regulations controlling smoking in the Bureau of Prisons. We agree that the amended regulations render this claim moot. Accordingly, we grant in part the motion to dismiss, and we dismiss this claim. See Leonard v. Hammond, 804 F.2d 838, 842 (4th Cir. 1986).

We deny, however, the Government's motion to dismiss with respect to Lyons' remaining pro se claims. Having considered these remaining claims on the merits, we nonetheless find them unpersuasive. Accordingly, we affirm as to the remaining claims on the reasoning of the district court. See Lyons v. Beeler, No. CA-02-467-5-F3 (E.D.N.C. Apr. 23, 2003). 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