

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7362

PERRY E. THORNLEY, JR.,

Plaintiff - Appellant,

versus

GENE JOHNSON, Regional Director; RUFUS
FLEMING, Warden, Associate Regional Director;
GEORGE HINKLE, GRCC Chief Warden; KEITH DAVIS,
Associate Warden; A. TILLERY, Grievance
Coordinator; CHRISTOPHER MITCHELL, Lieutenant,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern
District of Virginia, at Richmond. David G. Lowe, Magistrate
Judge. (CA-03-689)

Submitted: February 23, 2005

Decided: March 3, 2005

Before WILKINSON, MOTZ, and DUNCAN, Circuit Judges.

Affirmed in part, vacated in part, and remanded by unpublished per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

Perry E. Thornley, Jr., Appellant Pro Se. William W. Muse,
Assistant Attorney General, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Perry E. Thornley, Jr., a Vermont inmate temporarily housed in a Virginia prison at the time of the events giving rise to his suit under 42 U.S.C. § 1983 (2000), appeals the orders of the magistrate judge granting summary judgment to all but one defendant and subsequently dismissing the complaint without prejudice as to the remaining defendant.

We have reviewed the record and conclude that the magistrate judge properly granted summary judgment to all defendants other than Lt. Mitchell. Accordingly, we affirm the grant of summary judgment for the reasons stated by the magistrate judge. See Thornley v. Johnson, No. CA-03-689 (E.D. Va. Jun. 24, 2004).

We conclude, however, that the magistrate judge erred in dismissing the complaint because Thornley's incarceration prevented him from being present on the scheduled trial date. We have previously articulated a three-factor test for determining the proper disposition of a prisoner's complaint when the prisoner's presence at trial is at issue. Muhammad v. Warden, 849 F.2d 107 (4th Cir. 1988). In promulgating these factors, we encouraged district courts to explain the basis for their decision in order to allow effective appellate review. Id. In this case, although the magistrate judge considered the lack of funds for transporting Thornley or appointing counsel to represent him and the prejudice

to the defendant that would result from delaying the proceedings until Thornley is released from prison, we are unable to discern whether, and to what extent, he considered the other factors.

We therefore vacate the order of the magistrate judge dismissing Thornley's complaint as to Lt. Mitchell and remand for reconsideration. We express no opinion as to the merits of Thornley's complaint. 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 IN PART, AND REMANDED