

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6197

JEFFREY S. CERKONEY,

Plaintiff - Appellant,

versus

MARCUS HUGHES, Superintendent at
Avery/Mitchell Correctional Institution;
ROBERT CALLOWAY, Sergeant at Avery/Mitchell
Correctional Institution; ELIZABETH ERVIN,
Correctional Officer at Avery/Mitchell
Correctional Institution; JAMES CABLES,
Correctional Officer at Avery/Mitchell
Correctional Institution,

Defendants - Appellees.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Graham C. Mullen, Chief
District Judge. (CA-04-211-1-1MU)

Submitted: May 31, 2005

Decided: June 22, 2005

Before NIEMEYER and WILLIAMS, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Jeffrey S. Cerkoney, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jeffrey S. Cerkoney, a North Carolina inmate, appeals the district court's order dismissing his 42 U.S.C. § 1983 (2000) complaint without service of process for failure to state a claim of excessive force in violation of the Eighth Amendment.

In his complaint, Cerkoney alleges that he was hog-tied for twenty-four hours during which he was not allowed to go to the bathroom. As a result, he allegedly urinated on himself, suffered petite-mal seizures in the tied position, and experienced severe abdominal and back pain due to irritable bowel disease. On this record, we cannot find that Cerkoney's complaint fails to state a claim for excessive force. See Norman v. Taylor, 25 F.3d 1259, 1263 & n.4 (4th Cir. 1994) (en banc).

Accordingly, we vacate the district court's order and remand for further proceedings so that the complaint may be served on Defendants and the record properly developed. 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.

VACATED AND REMANDED