

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-6614

EDWARD FURBY,

Plaintiff - Appellant,

versus

CORRECTIONS OFFICER PATIFOOT,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:07-cv-00065-CMH)

Submitted: September 11, 2007

Decided: September 14, 2007

Before WILKINSON, MOTZ, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Edward Furby, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Edward Furby, formerly a Virginia inmate, appeals the district court's order dismissing his 42 U.S.C. § 1983 (2000) complaint without prejudice on the grounds Furby failed to comply with its previous order to particularize his complaint and allege facts indicating he was deprived of a federal right by an individual acting under color of state law, and because he failed to provide clear evidence of administrative exhaustion as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997(e)(a) (2000) ("PLRA"). We have reviewed the record and find no reversible error.

While the district court may have erred in dismissing the complaint for failure to provide evidence he exhausted his administrative remedies, see Jones v. Bock, 127 S. Ct. 910, 921 (2007) (holding that "failure to exhaust is an affirmative defense under the PLRA" and "inmates are not required to specially plead or demonstrate exhaustion in their complaints"), we nonetheless affirm the district court's order on the grounds that Furby failed to particularize his complaint to allege facts indicating he was deprived of a federal right by an individual acting under color of state law. We grant Furby leave to proceed in forma pauperis on appeal. 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