

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7692

1STARR DALTON,

Plaintiff - Appellant,

v.

WEST VIRGINIA DIVISION OF CORRECTIONS; DAVID BALLARD,
Warden; JIM RUBENSTEIN; SAMUEL KEENAN, Corporal; DONNA
BRAENOVICH, Corporal; DARREN KOZART, Correctional Officer
II; JARED ALSOP, Correctional Officer II; DEREK MCKINNEY,
Lieutenant; JASON CLAUDELL, Captain; BRIAN GREENWOOD,

Defendants - Appellees.

Appeal from the United States District Court for the Southern
District of West Virginia, at Charleston. Joseph R. Goodwin,
Chief District Judge. (2:08-cv-01151)

Submitted: January 19, 2010

Decided: January 27, 2010

Before NIEMEYER, KING, and DAVIS, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

1Starr Dalton, Appellant Pro Se. Christopher James Sears,
SHUMAN, MCCUSKEY & SLICER, PLLC, Charleston, West Virginia, for
Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

1Starr Dalton appeals the district court's order accepting the recommendation of the magistrate judge and dismissing his 42 U.S.C. § 1983 (2006) complaint for failure to exhaust administrative remedies. We have reviewed the record and find no reversible error. Accordingly, we modify the dismissal of the action to be without prejudice and affirm as modified for the reasons stated by the district court. Dalton v. W. Va. Div. of Corr., No. 2:08-cv-01151 (S.D.W. Va. Aug. 25, 2009). 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 AS MODIFIED