

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7123

DANIEL BLUE,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. Frederick P. Stamp, Jr., Senior District Judge. (5:12-cv-00121-FPS-DJJ)

Submitted: December 30, 2013

Decided: January 13, 2014

Before AGEE and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Daniel Blue, Appellant Pro Se. Jarod James Douglas, Assistant United States Attorney, Wheeling, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Daniel Blue appeals the district court's order accepting the recommendation of the magistrate judge and dismissing Blue's claim under the Federal Tort Claims Act ("FTCA") for lack of subject matter jurisdiction. We have reviewed the record and find no reversible error. Blue v. United States, No. 5:12-cv-00121-FPS-DJJ (N.D. W. Va. May 3, 2013).^{*} We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

^{*} Even assuming, as Blue suggests, that the mailbox rule applies in the FTCA context, we conclude that Blue's filing of his administrative claim with the wrong agency does not warrant constructive filing under the circumstances of this case. See Hart v. Dep't of Labor ex rel. United States, 116 F.3d 1338, 1340 (10th Cir. 1997) (finding no constructive filing because claimant failed to file in a timely manner with the prior agency and the untimeliness could not be attributed to any dilatory conduct on the part of a federal agency).