

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 96-6703

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BRYANT PHIPPS,

Plaintiff - Appellant,

versus

RON ANGELONE, Director, Department of Corrections; SAMUEL V. PRUETT, Warden; ROSE M. LEABOUGH, Adjustment Hearings Chairperson; SERGEANT GREYER, Investigation Officer; WILLIAM P. RODGERS, Regional Administrator,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, District Judge. (CA-95-1173-AM)

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Submitted: June 28, 1996

Decided: September 5, 1996

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Before HALL and MICHAEL, Circuit Judges, and BUTZNER, Senior Circuit Judge.

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Affirmed as modified by unpublished per curiam opinion.

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Bryant Phipps, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Bryant Phipps appeals the district court's order dismissing his 42 U.S.C. § 1983 (1988) action for failing to state a claim upon which relief could be granted. We modify the dismissal to reflect that the action is dismissed as frivolous under 28 U.S.C. § 1915(d) (1988), and we affirm the dismissal as modified.

Phipps alleged that his due process rights were violated when, pursuant to a prison disciplinary proceeding, he was found guilty of being under the influence of heroin. Phipps claimed the right to a urine screen at his own expense to confirm the results of the test upon which he was convicted.

After considering an amended complaint submitted by Phipps, and before process was served on the defendants, the district court dismissed the action for failing to state a claim upon which relief could be granted. While we find the dismissal proper, the district court did not specify the rule or statute under which it proceeded in dismissing the claim.

The district court should have dismissed the action pursuant to § 1915(d), because Phipps proceeds in forma pauperis and none of the defendants have been served with process. Accordingly, though we affirm the district court's order, we modify the order to reflect that the dismissal is pursuant to § 1915(d). 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