

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 97-7094**

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LEE EDWARD ELLERBEE,

Plaintiff - Appellant,

versus

M. J. MCDADE, Superintendent; PEGGY JONES,  
Head Nurse, Medical Staff; OFFICER KORNGAY;  
FRANKLIN FREEMAN,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, District Judge. (CA-97-11-5-2-H)

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Submitted: November 6, 1997

Decided: November 25, 1997

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Before WIDENER and LUTTIG, Circuit Judges, and BUTZNER, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Lee Edward Ellerbee, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant appeals the district court's order dismissing his 42 U.S.C. § 1983 (1994) action as frivolous. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Ellerbee v. McDade, No. CA-97-11-5-2-H (E.D. Va. July 28, 1997). Even if Appellant's prior 1995 action, which raised the same allegations, tolled the limitations period, the complaint in this appeal was filed outside the applicable three-year statute of limitations. 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