

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 97-7781**

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LARRY EUGENE SMITH, JR.,

Plaintiff - Appellant,

versus

COLBERT L. RESPASS; BEN PILLMON,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, Chief District Judge. (CA-96-853-5-BO(3))

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Submitted: July 22, 1998

Decided: August 4, 1998

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Before ERVIN, MICHAEL, and MOTZ, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Larry Eugene Smith, Jr., Appellant Pro Se. Jane Ray Garvey, OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Larry Eugene Smith, Jr., appeals the district court's orders denying relief on his 42 U.S.C.A. § 1983 (West Supp. 1998) complaint. We have reviewed the record and the district court's opinion declining to accept the magistrate judge's recommendation and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Smith v. Respass, No. CA-96-853-5-BO(3) (E.D.N.C. Nov. 18, 1997). After a similar review, we find that the district court did not abuse its discretion in dismissing Smith's due process challenge to his prison disciplinary hearing as frivolous. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); Edwards v. Balisok, 520 U.S. 641, \_\_\_ (1997). We deny Smith's motion for the appointment of counsel and 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