

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-7337**

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GARY NEAL SADLER,

Plaintiff - Appellee,

versus

S. K. YOUNG, Warden; JOHN M. EATON, Wallens  
Ridge State Prison; TERRY W. GIVENS, Wallens  
Ridge State Prison,

Defendants - Appellants,

and

M. HUTCHINSON; JOHN DOE; JANE DOE; D. TAYLOR,  
Wallens Ridge State Prison; NURSE HARBER;  
CORRECTIONAL OFFICER PARLIER; NURSE HOBBS,

Defendants.

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Appeal from the United States District Court for the Western  
District of Virginia, at Big Stone Gap. James P. Jones, Chief  
District Judge. (CA-00-70581-2-JPJ)

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Submitted: November 15, 2004

Decided: January 5, 2005

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Before MOTZ, TRAXLER, and GREGORY, Circuit Judges.

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Reversed and remanded by unpublished per curiam opinion.

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Mark Ralph Davis, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA,  
Richmond, Virginia, for Appellants. Gary Neal Sadler, Appellee Pro  
Se.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Defendants appeal the district court's order denying them qualified immunity on Gary Neal Sadler's due process claim. We need not consider Defendants' argument that they are entitled to qualified immunity from the due process claim because Sadler never claimed they violated his right to due process; Sadler alleged only an Eighth Amendment violation. Thus, the district court erred when it instructed the jury on the elements of a due process violation. See Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985). We decline to exercise pendent appellate jurisdiction over Defendants' arguments that the district court erred in granting Sadler judgment as a matter of law on his Eighth Amendment claim (to which Defendants do not assert qualified immunity), because that claim is not inextricably intertwined with the due process claim, (to which Defendants do assert qualified immunity). See Taylor v. Waters, 81 F.3d 429, 437 (4th Cir. 1996). 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.

REVERSED AND REMANDED