

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

CLARENCE COLES, JR.,

Plaintiff-Appellant.

v.

No. 97-6223

DAVE ROBINSON, Warden,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
James C. Cacheris, Chief District Judge.
(CA-96-1413)

Submitted: May 1, 1997

Decided: May 16, 1997

Before WIDENER and MURNAGHAN, Circuit Judges, and
PHILLIPS, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Clarence Coles, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Clarence Coles, Jr., appeals from the district court's order dismissing his 42 U.S.C. § 1983 (1994) complaint for failure to pay the initial installment on the filing fee. In October 1996, Coles timely consented to payment of an initial partial filing fee and monthly payments toward the balance of the \$120 filing fee from his inmate trust account. In December, the district court assessed the initial partial filing fee of \$4.28 to be paid within thirty days. On January 16, 1997, the district court dismissed Coles' action for failure to pay the \$4.28 initial installment on the filing fee.

On January 15, 1997, Nottoway Correctional Center remitted to the district court from Coles' inmate trust account \$12.39--the initial payment plus the next month's installment. It was not until February 11--one month after the dismissal of this action--that the correctional center notified the district court that it was withholding payments on the filing fee until the balance in Coles' reserve account totalled \$10.00 or more.

Because the district court was not informed that the correctional center was withholding payment for this reason when it dismissed Coles' § 1983 action, we vacate the district court's order and remand this case so that it may be reinstated on the district court's docket. 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.

VACATED AND REMANDED