

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-7020

JOHN DAVID SIMPSON,

Plaintiff - Appellant,

versus

RONALD ANGELONE, Director, Virginia Department of Corrections; CHARLES J. HARLAND, Chief Dentist, Virginia Department of Corrections; DR. KOPELEVE, Chief Dentist, Powhatan Correctional Center, Medical Unit; OFFICER COCHRAN, Security Official, Powhatan Correctional Center, and other unknown at this time,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. John A. MacKenzie, Senior District Judge. (CA-97-15-2)

Submitted: September 25, 1997

Decided: October 10, 1997

Before LUTTIG, MICHAEL, and MOTZ, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

John David Simpson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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) complaint for failure to exhaust administrative remedies. The district court properly required exhaustion of administrative remedies under 42 U.S.C.A. § 1997e(a) (West Supp. 1997). Because Appellant did not demonstrate to the district court that he had exhausted administrative remedies or that such remedies were not available, the court's dismissal of the action was not an abuse of discretion. We therefore affirm the district court's order but modify it to reflect that the dismissal is without prejudice to Appellant's right to refile the action after exhaustion. 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