

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-3555

Grady Newingham,

Appellant,

v.

David Westbrook, Sgt., Maximum
Security Unit, ADC; Turoty Hayes,
CO-I, Maximum Security Unit, ADC;
Greg Harmon, Warden, Maximum
Security Unit, ADC; Kay Wade,
Corporal, Maximum Security Unit,
ADC,

Appellees.

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Appeal from the United States
District Court for the
Eastern District of Arkansas.

[UNPUBLISHED]

Submitted: July 27, 2005
Filed: August 9, 2005

Before MELLOY, MAGILL, and GRUENDER, Circuit Judges.

PER CURIAM.

Arkansas inmate Grady Newingham appeals the district court's¹ dismissal of his 42 U.S.C. § 1983 action against various prison employees for failure to exhaust administrative remedies. We affirm, but modify the dismissal to be without prejudice and clarify that the dismissal does not count as a "strike" under 28 U.S.C. § 1915(g).

Dismissal is merited because Newingham failed to show he exhausted his administrative remedies as to his claim that Defendant Arkansas Department of Correction Director Larry Norris failed to protect him from an assault. See Kozohorsky v. Harmon, 332 F.3d 1141, 1143 (8th Cir. 2003). Newingham's argument on appeal that administrative remedies were unavailable to him because they did not provide for monetary relief is without merit. See Booth v. Churner, 582 U.S. 731, 734 (2001).

Accordingly, we affirm.

¹The Honorable J. Leon Holmes, United States District Judge for the Eastern District of Arkansas, adopting the report and recommendation of the Honorable Henry L. Jones, Jr., United States Magistrate Judge for the Eastern District of Arkansas.