

United States Court of Appeals
For the Eighth Circuit

No. 19-2915

Anthony Lamar Hayes

Plaintiff - Appellant

v.

Mitchell Johnson, Jr., Captain, Hawkins Unit for Women; Michael M. Lowe, Major, Wrightsville Unit; Terrie L. Banister, Disciplinary Hearing Judge, ADC; Itena Jackson, SATP Counselor, Wrightsville Unit; Claudia Harris, Deputy Warden, Wrightsville Unit; Randy Watson, Warden, Wrightsville Unit; Dexter Payne, Deputy Director, ADC

Defendants - Appellees

Appeal from United States District Court
for the Eastern District of Arkansas - Little Rock

Submitted: October 27, 2020

Filed: November 3, 2020

[Unpublished]

Before BENTON, WOLLMAN, and SHEPHERD, Circuit Judges.

PER CURIAM.

Anthony Lamar Hayes, an inmate in the Arkansas Department of Correction, appeals following the district court's¹ adverse grant of summary judgment in his pro se 42 U.S.C. § 1983 action. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

After careful review of the record and the parties' arguments on appeal, this court concludes that the district court properly granted summary judgment. *See Peterson v. Kopp*, 754 F.3d 594, 598 (8th Cir. 2014) (grant of summary judgment is reviewed de novo; record is viewed in light most favorable to nonmoving party). This court clarifies, however, that to the extent Hayes raised retaliation claims against defendants Claudia Harris and Itena Jackson, the dismissal of those claims is without prejudice. *See* 28 U.S.C. § 2106 (appellate court may modify any judgment brought before it for review).

The judgment is affirmed as modified. *See* 8th Cir. R. 47B.

¹The Honorable D.P. Marshall, Jr., Chief Judge, United States District Court for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable Joe J. Volpe, United States Magistrate Judge for the Eastern District of Arkansas.