

United States Court of Appeals
For the Eighth Circuit

No. 22-2973

Colton J. Novascone

Plaintiff - Appellant

v.

Nebraska Department of Correctional Services; Timothy Chamberlain, Medical
Director, N.D.C.S.

Defendants

Daniel Danaher, P.A., N.D.C.S.

Defendant - Appellee

Appeal from United States District Court
for the District of Nebraska - Omaha

Submitted: March 29, 2023

Filed: April 3, 2023

[Unpublished]

Before BENTON, SHEPHERD, and ERICKSON, Circuit Judges.

PER CURIAM.

Colton Novascone appeals the district court's¹ adverse grant of summary judgment in his pro se 42 U.S.C. § 1983 action, in which he alleged that physician's assistant Daniel Danaher was deliberately indifferent to his serious medical need by prescribing a penicillin-derived antibiotic despite his reported penicillin allergy. Upon de novo review, we affirm. See Shipp v. Murphy, 9 F.4th 694, 702-03 (8th Cir. 2021) (standard of review; to establish deliberate indifference, plaintiff must show that he suffered from objectively serious medical need, and that defendant knew of and disregarded that need).

We agree with the district court that Novascone did not establish that he had an objectively serious medical need, see Kayser v. Caspari, 16 F.3d 280, 281 (8th Cir. 1994) (inmate's self-diagnosis could not establish that he had medical condition, and medical evidence did not support existence of condition; thus, inmate had not shown serious medical need); nor did he establish that Danaher disregarded any such need, see Barr v. Pearson, 909 F.3d 919, 922 (8th Cir. 2018) (defendants did not disregard inmate's serious medical need in making medication decision, as decision was exercise of medical judgment and was based upon consideration of inmate's complaints); Dulany v. Carnahan, 132 F.3d 1234, 1239-40 (8th Cir. 1997) (prison doctors are free to exercise medical judgment; in face of medical records indicating that treatment was provided and physician affidavits indicating that care provided was adequate, inmate could not create question of fact merely by stating that she felt treatment was inadequate).

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

¹The Honorable Richard G. Kopf, United States District Judge for the District of Nebraska.