

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 14-6096**

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S. SHANE SMITH,

Plaintiff - Appellant,

v.

THEODIS BECK, Secretary of Correction, North Carolina Department of Corrections, sued in his individual and official capacity; BOYD BENNETT, Director of Prisons, North Carolina Department of Corrections, sued in his individual and official capacity; STEVE BAILEY, Superintendent, Western Region Director, North Carolina Department of Corrections, sued in his individual and official capacity; ROGER MOON, Western Region Operations Manager, North Carolina Department of Corrections, sued in his individual and official capacity; DOUG MITCHELL, Superintendent (Retired), Craggy Correctional Center, North Carolina Department of Corrections, sued in his individual and official capacity; LEWIS SMITH, Lieutenant, Albemarle Correctional Institution, North Carolina Department of Corrections, sued in his individual and official capacity; EDITH POPE, Assistant Superintendent (former), Craggy Correctional Center, North Carolina Department of Corrections, sued in her individual and official capacity; GEORGE POPE, sued in his individual capacity; WANDA GORE, individually and in her official capacity as Unit Manager for the Albemarle Correctional Institution; LARRY LANIER, individually and in his official capacity as Assistant Unit Manager for the Albemarle Correctional Institution,

Defendants - Appellees.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, District Judge. (1:08-cv-00166-TDS-LPA)

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Submitted: June 26, 2014

Decided: July 1, 2014

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Before MOTZ and GREGORY, Circuit Judges, and DAVIS, Senior  
Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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S. Shane Smith, Appellant Pro Se. Yvonne Bulluck Ricci,  
Assistant Attorney General, Raleigh, North Carolina; Edith Pope,  
Asheville, North Carolina; George Pope, Asheville, North  
Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

S. Shane Smith appeals the district court's entry of judgment in accordance with the jury's verdict at trial, its pre-verdict ruling at trial under Fed. R. Civ. P. 50, and its April 18, 2012 order affirming the magistrate judge's order denying his motion to strike and adopting the magistrate judge's recommendation to grant the summary judgment motion filed by Defendants Beck, Bennett, Bailey, Moon, Mitchell, Smith, Gore, and Lanier ("the moving Defendants") in his civil rights action alleging claims under 42 U.S.C. § 1983 (2012) and North Carolina law. On appeal, Smith challenges the district court's grant of summary judgment to the moving Defendants on his claims against them under the Eighth Amendment and for retaliation and its ruling denying his motion to strike. We have reviewed the record with respect to these challenges and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. Smith v. Beck, No. 1:08-cv-00166-TDS-LPA (M.D.N.C. Apr. 18, 2012 & Dec. 19, 2013).

Smith also challenges the district court's ruling at trial on the Rule 50 motion. Smith, however, has not produced a transcript of the trial. The appellant bears the burden of including in the record on appeal a transcript of all parts of the proceedings material to the issues raised on appeal. Fed. R. App. P. 10(b); 4th Cir. R. 10(c)(1). Although an

appellant proceeding on appeal in forma pauperis may obtain a transcript at government expense in certain limited circumstances, see 28 U.S.C. § 753(f) (2012), Smith paid the appellate filing fee and does not seek production of the transcript of the trial based on any inability to pay for it. By failing to produce the transcript or to qualify for the production of the transcript at government expense, Smith has waived review of this issue, which depends on the transcript to show error. Powell v. Estelle, 959 F.2d 22, 26 (5th Cir. 1992) (per curiam); Keller v. Prince George's Cnty., 827 F.2d 952, 954 n.1 (4th Cir. 1987).

Accordingly, we affirm the district court's judgment. We deny Smith's motion to appoint counsel and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED