

United States Court of Appeals
For the Eighth Circuit

No. 13-3382

Charles A. Winston

Plaintiff - Appellant

v.

Theaster Petty, Kitchen Supervisor, East Arkansas Regional Unit, ADC; Lahan Ester, Disciplinary Hearing Officer, East Arkansas Regional Unit, ADC; Greg Harmon, Warden, East Arkansas Regional Unit, ADC; James Gibon, Disciplinary Hearing Administrator, ADC; Larry D. May, Chief Deputy Director, ADC; Ray Hobbs, Director, ADC

Defendants - Appellees

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

Submitted: June 20, 2014

Filed: June 23, 2014

[Unpublished]

Before GRUENDER, BOWMAN, and SHEPHERD, Circuit Judges.

PER CURIAM.

Arkansas inmate Charles Winston appeals the district court's¹ dismissal of his 42 U.S.C. § 1983 action against Theaster Petty, a kitchen supervisor with the Arkansas Department of Correction (ADC), and various other ADC employees. After careful review, we conclude that Winston's retaliatory discipline claim failed as a matter of law because Petty's disciplinary report provides some evidence that Winston actually violated prison rules. *Cf. Hartsfield v. Nichols*, 511 F.3d 826, 831 (8th Cir. 2008) (report from correctional officer, even if disputed by inmate and supported by no other evidence, legally suffices as some evidence upon which to base prison disciplinary violation, if violation is found by impartial decisionmaker). We also conclude that Winston cannot create a genuine issue of material fact as to his hearing officer's impartiality based only on the allegation that Winston had previously filed grievances against the hearing officer. *See Meuir v. Greene Cnty. Jail Emps.*, 487 F.3d 1115, 1119 (8th Cir. 2007) (in case of retaliatory discipline, merely alleging that act was retaliatory is insufficient).

We thus affirm. *See* 8th Cir. R. 47B. We also deny Winston's pending motion for appointment of counsel.

¹The Honorable J. Leon Holmes, United States District Judge for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable Beth Deere, United States Magistrate Judge for the Eastern District of Arkansas.