

United States Court of Appeals
For the Eighth Circuit

No. 20-1261

Sylvester Barbee

Plaintiff - Appellant

v.

Jason Boyd, Poultry/Swine Company Inspector, Cummins Unit, ADC

Defendant - Appellee

Troy Moore, Physician; Cheryl Ellis, Inspector, Cummins Unit, ADC; Aundrea
Weekly, Safety and Sanitation Officer, Cummins Unit, ADC

Defendants

Angelika Smarjessi, Food Preparation & Service Manager, Cummins Unit, ADC

Defendant - Appellee

Doe, 2012 Henhouse Sanitation Inspector

Defendant

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

Submitted: August 3, 2020

Filed: August 7, 2020

[Unpublished]

Before COLLOTON, GRUENDER, and GRASZ, Circuit Judges.

PER CURIAM.

In this 42 U.S.C. § 1983 action, Arkansas inmate Sylvester Barbee appeals following the district court's¹ adverse grant of summary judgment. Viewing the record in a light most favorable to Barbee, and drawing all inferences in his favor, we find that summary judgment was properly granted. *See Murchison v. Rogers*, 779 F.3d 882, 886-87 (8th Cir. 2015) (de novo standard of review). Specifically, we agree with the district court that Barbee did not exhaust administrative remedies on his claims against defendant Angelika Smarjessi, *see King v. Iowa Dep't of Corr.*, 598 F.3d 1051, 1052 (8th Cir. 2010) (reviewing de novo a dismissal for failure to exhaust); and that the record did not reflect defendant Jason Boyd's deliberate indifference to Barbee's risk of exposure to salmonella, *see Kulkay v. Roy*, 847 F.3d 637, 643 (8th Cir. 2017) (finding, in a case challenging conditions of confinement, that requisite state of mind is deliberate indifference to inmate health and safety; official is deliberately indifferent if he actually knows of the substantial risk and fails reasonably to respond to it); *Popoalii v. Corr. Med. Servs.*, 512 F.3d 488, 499 (8th Cir. 2009) (recognizing that deliberate indifference is similar to criminal recklessness and requires more than gross negligence). The judgment is affirmed, *see* 8th Cir. R. 47B; and Barbee's motion for counsel is denied as moot.

¹The Honorable Kristine G. Baker, United States District Judge for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable Jerome T. Kearney, United States Magistrate Judge for the Eastern District of Arkansas.