

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 09-7688**

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1STARR DALTON,

Plaintiff - Appellant,

v.

WEST VIRGINIA DIVISION OF CORRECTIONS; DAVID BALLARD,  
Warden; JIM RUBENSTEIN; JASON COLLINS, Captain (pty);  
MARGARET CLIFFORD, Lieutenant; JAMES MCCLOUD, Lieutenant;  
BRIAN MATTOX, Sergeant; CURTIS DIXON, Sergeant; CLINTON  
RYAN, Corporal; NATE KENDRICK, Corporal; MICHAEL ANGEL;  
GARRATTE ADAMS; BRIAN GREENWOOD,

Defendants - Appellees.

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Appeal from the United States District Court for the Southern  
District of West Virginia, at Charleston. Joseph R. Goodwin,  
Chief District Judge. (2:08-cv-00335)

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Submitted: April 15, 2010

Decided: May 19, 2010

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Before TRAXLER, Chief Judge, and WILKINSON and NIEMEYER, Circuit  
Judges.

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Affirmed as modified by unpublished per curiam opinion.

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1Starr Dalton, Appellant Pro Se. David Edward Schumacher, Jason  
Alan Winnell, BAILEY & WYANT, PLLC, Charleston, West Virginia,  
for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

1Starr Dalton appeals the district court's order accepting the recommendation of the magistrate judge and dismissing his 42 U.S.C. § 1983 (2006) complaint for failure to exhaust administrative remedies. The district court properly required exhaustion of administrative remedies under 42 U.S.C. § 1997e(a) (2006). Because Dalton did not demonstrate to the district court that he exhausted his administrative remedies or that such remedies were not available, the district court's dismissal was not an abuse of discretion. Accordingly we affirm the district court's order, which is modified to reflect that the dismissal was without prejudice to Dalton's right to refile his complaint after he has exhausted his administrative remedies. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED