

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-6126

BRANDON JEROD SMITH,

Plaintiff - Appellant,

v.

OFFICER OWENS; OFFICER DIXON; LIEUTENANT CARICO,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Samuel G. Wilson, District Judge. (7:13-cv-00060-SGW-PMS)

Submitted: May 30, 2014

Decided: June 10, 2014

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

Affirmed by unpublished per curiam opinion.

Brandon Jerod Smith, Appellant Pro Se. Richard Carson Vorhis, Senior Assistant Attorney General, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brandon Jerod Smith appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on his 42 U.S.C. § 1983 (2006) complaint. We have reviewed the record and find no reversible error. Accordingly, we deny Smith's motion for appointment of counsel and affirm for the reasons stated by the district court. Smith v. Owens, No. 7:13-cv-00060-SGW-PMS (W.D. Va. Dec. 18, 2013).

We note that our holding with respect to Smith's excessive force claim is determined by the deferential standard of review. Following a bench trial, this court may reverse a district court's factual findings only if they are clearly erroneous. Roanoke Cement Co. v. Falk Corp., 413 F.3d 431, 433 (4th Cir. 2005). The area of the prison in which Smith alleges the assault took place -- the kitchen hallway -- is not covered by the prison's surveillance system, so the district court's findings as to the incident were necessarily based on assessments of witness credibility. "[W]hen a district court's factual finding in a bench trial is based upon assessments of witness credibility, such finding is deserving of the highest degree of appellate deference." Evergreen Int'l, S.A. v. Norfolk Dredging Co., 531 F.3d 302, 308 (4th Cir. 2008) (quotation marks and citation omitted). Because the district

court's factual findings are not clearly erroneous, we must affirm those findings and the judgment in favor of defendants.

We 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