

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6434

RODERICK BROWN,

Plaintiff - Appellant,

v.

UNITED STATES DEPARTMENT OF JUSTICE; MARK S. INCH, Director of Bureau of Prisons; RUBY MEMORIAL HOSPITAL; MOHAMAD SALKINI; BARBARA VON BLANCKENSEE, Former Warden, FCI Morgantown; MR. JOHN F. CARAWAY, Regional Director, BOP South Central Regional Office; RENEE CROGAN, Retired Assistant Health Services Administrator, FCI Morgantown; TIMOTHY TOMPKINS, Case Management Coordinator, FCI Morgantown def; KENNETH MONTGOMERY, Lieutenant, FCI Morgantown; BRIAN PLAVI, Correctional Counselor, FCI Morgantowndef,

Defendants - Appellees,

B. VON BLANKENSEE, Former Warden FCI Morgantown; VARIOUS NAMED AND UNNAMED BOP EMPLOYEES; J. F. CARAWAY, Regional Director, Mid-Atlantic Region; MRS. CROGAN, Assistant Health Service Administrator; MR. T. TOMPKINGS, Assistant Health Service Administrator; MR. MONTGOMERY, Lieutenant at FCI Morgantown; MR. B. PLAVI, Bates Unit Counselor,

Defendants.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Irene M. Keeley, Senior District Judge. (1:17-cv-00144-IMK)

Submitted: November 19, 2019

Decided: December 6, 2019

Before GREGORY, Chief Judge, and FLOYD and HARRIS, Circuit Judges.

Affirmed in part and affirmed as modified in part by unpublished per curiam opinion.

Roderick Brown, Appellant Pro Se. Chelsea Virginia Prince, STEPTOE & JOHNSON PLLC, Morgantown, West Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Roderick Brown, a former federal inmate, appeals the district court's order adopting the magistrate judge's recommendation and denying relief on Brown's complaint asserting medical malpractice claims and alleging, pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), violations of his constitutional and civil rights. He also challenges the court's denial of his motion for default judgment as moot.

After careful review of the record, we conclude that the district court properly denied relief on Brown's *Bivens* claims. We also find no reversible error in the court's decision to deny Brown's motion for default judgment as moot. Accordingly, we affirm those portions of the court's order. While the court correctly dismissed Brown's medical malpractice claims for failure to comply with West Virginia's Medical Professional Liability Act, W. Va. Code § 55-7B-6 (2018 & Supp. 2019), the court should have dismissed that portion of the complaint without prejudice. *See, e.g., Cline v. Kresa-Reahl*, 728 S.E.2d 87, 98 (W. Va. 2012). Accordingly, we affirm that portion of the court's order as modified to reflect that the dismissal is without prejudice.

We deny Brown's motion for a temporary administrative stay. 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 IN PART,
AFFIRMED AS MODIFIED IN PART*