

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7163

RONALD KEITH SUTHERLAND, JR.,

Plaintiff - Appellant,

v.

JOHN SAPPER; ASHLEY HUGHES; JASON W. COHOON; SEAN DILLARD;
KIMBERLY D. GRANDE; LARRY DAIL,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Raleigh. Richard E. Myers, II, Chief District Judge. (5:20-ct-03322-M)

Submitted: December 15, 2022

Decided: December 20, 2022

Before GREGORY, Chief Judge, and WILKINSON and DIAZ, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Ronald Keith Sutherland, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ronald Keith Sutherland, Jr., appeals the district court's order dismissing his 42 U.S.C. § 1983 complaint without prejudice for failure to exhaust his administrative remedies. In its dismissal order, the court found that Sutherland failed to respond to Defendants' motion to dismiss. Due to this purported failure to respond, the court concluded that Defendants' showing that Sutherland failed to exhaust his administrative remedies was undisputed. On appeal, Sutherland claims that he did in fact mail a response in opposition to Defendants' motion to dismiss in January 2022.

Our review of the record revealed some evidence suggesting that Sutherland mailed a response in opposition to the district court. Accordingly, we vacate the court's order and remand so that the court can determine whether Sutherland in fact mailed a response in opposition and, if so, whether dismissal of the complaint is still the appropriate disposition. We deny Sutherland's motion for assignment of counsel. 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.

VACATED AND REMANDED