

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 07-2336

Anthony James Moore,

Appellant,

v.

Timothy Schuetzle, in his individual
and official capacities,

Appellee.

*
*
*
*
*
*
*
*
*
*

Appeal from the United States
District Court for the
District of North Dakota.

[UNPUBLISHED]

Submitted: July 31, 2008

Filed: August 25, 2008

Before MELLOY, COLLOTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

North Dakota inmate Anthony James Moore appeals the district court's¹ adverse grant of summary judgment in his 42 U.S.C. § 1983 action. Having conducted de novo review of the record, see Johnson v. Blaukat, 453 F.3d 1108, 1112 (8th Cir. 2006), we find no basis for reversal. Accordingly, we affirm. See 8th Cir. R. 47B. However, as to Moore's claim alleging a lack of exercise in administrative segregation, we amend the dismissal to be without prejudice, as the record shows he

¹The Honorable Daniel L. Hovland, Chief Judge, United States District Court for the District of North Dakota.

did not administratively exhaust this claim before filing the instant lawsuit. See Johnson v. Jones, 340 F.3d 624, 627 (8th Cir. 2003) (inmate must exhaust before filing suit, or dismissal is mandatory).
