

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

No. 09-2982

Mitchell David Holbach,

Appellant,

v.

Dr. Richard Jenkins,

Appellee.

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* Appeal from the United States
* District Court for the
* District of North Dakota.
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* [UNPUBLISHED]
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Submitted: February 16, 2010

Filed: February 23, 2010

Before BYE, RILEY, and SHEPHERD, Circuit Judges.

PER CURIAM.

North Dakota inmate Mitchell David Holbach appeals the district court's¹ preservice dismissal without prejudice of his 42 U.S.C. § 1983 action. Upon de novo review, see Cooper v. Schriro, 189 F.3d 781, 783 (8th Cir. 1999) (per curiam), we agree with the district court that Holbach failed to state a claim. We affirm. See 8th Cir. R. 47B.

¹The Honorable Daniel L. Hovland, United States District Judge for the District of North Dakota, adopting the report and recommendations of the Honorable Charles S. Miller, Jr., United States Magistrate Judge for the District of North Dakota.