

United States Court of Appeals
For the Eighth Circuit

No. 21-1724

Jeffrey Charles Rodd

Plaintiff - Appellant

v.

Warden Leann LaRiva et al.

Defendants - Appellees

Appeal from United States District Court
for the District of Minnesota

Submitted: September 15, 2020

Filed: September 20, 2021

[Unpublished]

Before LOKEN, BENTON, and KOBES, Circuit Judges.

PER CURIAM.

Federal inmate Jeffrey Rodd brought this action under Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), and the Federal Tort Claims Act against various prison staff, alleging they were deliberately indifferent to his serious medical needs when they left him outside in sub zero weather in December 2014, causing serious

injury to his eyes, and then delayed effective treatment until successful surgeries on each eye in 2017.

The district court¹ granted summary judgment dismissing Rodd's Bivens claims for failure to exhaust available administrative remedies, as he did not attempt to file formal grievances. See Johnson v. Jones, 340 F.3d 624, 627 (8th Cir. 2003). His alleged blindness did not excuse failure to exhaust because Bureau of Prisons regulations provide for assistance in obtaining administrative remedies, and Rodd did not allege that prison officials prevented him from seeking assistance. See 28 C.F.R. § 542.16(a). The court dismissed Rodd's Federal Tort Claims Act claims because they were not adequately presented in any of the five prior administrative tort claims Rodd filed; this action was not filed within six months after the Bureau of Prisons denied the only arguably related claim, see 28 U.S.C. § 2401(b); and Rodd was not entitled to equitable tolling because he failed to establish that anything prevented him from timely filing suit, see Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005).

After careful review of the record, we agree with the district court's analysis and further conclude the court did not abuse its discretion in denying Rodd's motion for appointment of counsel. Accordingly, we affirm the judgment of the district court but modify dismissal of the Bivens claims to be without prejudice. We deny Rodd's request that we appoint appellate counsel.

¹The Honorable Nancy E. Brasel, United States District Judge for the District of Minnesota.