

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**NAPOLEON POLLARD, ADC # 89052**

**PLAINTIFF**

**v.**

**Case No. 5:08-cv-289-DPM-JTK**

**JOSEPH K. BUCHMAN,  
ROLAND ANDERSON,  
LARRY NORRIS, and  
JOHN BYUS**

**DEFENDANTS**

**ORDER**

The Court has carefully reviewed the Proposed Findings and Recommendations from Magistrate Judge Jerome T. Kearney. Pollard has not filed any objections. The Court sees no outcome-determinative legal error and no clear error of fact on the face of this record as a whole. FED. R. CIV. P. 72(b) (advisory committee notes to 1983 addition). The Court adopts Judge Kearney's proposed findings and partial recommended disposition, *Document No. 105*, in part, but also modifies it in part.

The Court agrees with Judge Kearney's analysis of Buchman's motion for summary judgment, *Document No. 63*. The Court grants Buchman's motion with respect to Pollard's Eighth Amendment claim. The Court denies without prejudice Buchman's motion with respect to the state law medical -

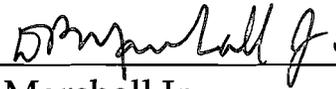
malpractice claim.

The Court also agrees that Norris and Byus's motion for summary judgment, *Document No. 84*, must be granted because Pollard has failed to exhaust his administrative remedies against them. The Court therefore dismisses Pollard's claims against Norris and Byus without prejudice.

The Court rejects, however, Magistrate Judge Kearney's further finding that Pollard failed to provide any evidence to support his deliberate-indifference claims against Norris and Byus. A district court should not reach the merits when the Defendants have successfully asserted Pollard's failure to exhaust his administrative remedies on that claim. *Davis v. Harmon*, 2010 WL 3259378, at \*1 (8th Cir. 19 Aug. 2010) (*per curiam*); see also *Lyon v. Vande Krol*, 305 F.3d 806, 807-09 (8th Cir. 2002) (*en banc*).

In summary, the Court grants in part and denies in part Buchman's motion for summary judgment, *Document No. 63*. The Court grants Norris and Byus's motion for summary judgment, *Document No. 84*.

So Ordered.



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D.P. Marshall Jr.  
United States District Judge

