

DISTRICT COURT OF THE UNITED STATES  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
5:10-cv-191-FDW

|                         |   |  |
|-------------------------|---|--|
| CHARLES M.CASSELL, III, | ) |  |
|                         | ) |  |
| Plaintiff,              | ) |  |
|                         | ) |  |
| vs.                     | ) |  |
|                         | ) |  |
| FNU DAWKINS, et al.,    | ) |  |
|                         | ) |  |
| Defendants.             | ) |  |
|                         | ) |  |

**ORDER**

**THIS MATTER** is before the Court on remand from the United States Court of Appeals for the Fourth Circuit. On January 27, 2015, the Fourth Circuit vacated and remanded this action, finding that on December 28, 2010, this Court erroneously dismissed Plaintiff’s 42 U.S.C. § 1983 action on initial review as barred by the so-called “three-strikes” rule set forth in 28 U.S.C. § 1915(g).<sup>1</sup> See (Doc. No. 10). In remanding to this Court, the Fourth Circuit held that Plaintiff did not in fact have three strikes when this Court dismissed this action, and the Fourth Circuit has remanded this action to this Court for further proceedings. (Doc. No. 20).

The Court notes that Plaintiff submitted an administrative remedies statement in this action, in which he affirmatively asserted that he had not exhausted his administrative remedies. See (Doc. No. 14). Furthermore, in examining the exhibits filed by Plaintiff in this action, it appears to the Court that Plaintiff, in fact, did not exhaust his administrative remedies before filing his Complaint in this action.

Before proceeding with an initial review on the merits, this Court will order Plaintiff to

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<sup>1</sup> Plaintiff originally filed this action on December 1, 2010, claiming that the named Defendants violated his Eighth Amendment rights based on his conditions of confinement and by being deliberately indifferent to his serious medical needs.

show cause to this Court why this action should not be dismissed for failure to exhaust administrative remedies.

**IT IS, THEREFORE, ORDERED that:**

- (1) Plaintiff shall have fourteen days from service of this Order in which to submit a statement to the Court as to whether he exhausted his administrative remedies before filing this action. If Plaintiff fails to respond to this order, this action will be dismissed without prejudice and without further notice to Plaintiff.

Signed: June 30, 2015

  
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Frank D. Whitney  
Chief United States District Judge

