

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:12-cv-24-RJC**

JOHN L. DAVIS,)
)
 Plaintiff,)
)
vs.)
)
RONNIE L. HUNEYCUTT,)
KYLE E. MURRAY,)
)
 Defendants.)
_____)

ORDER

THIS MATTER is before the Court on a Motion to Dismiss for Failure to State a Claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, filed by Defendants Ronnie L. Huneycutt and Kyle E. Murray (Doc. No. 22). On August 6, 2012, this Court conducted an initial review of Plaintiff’s Amended Complaint pursuant to 28 U.S.C. § 1915(e)(2) and concluded that Plaintiff’s allegations of an Eighth Amendment violation against Defendants survived initial review. (Doc. No. 13). The standard of review for dismissal under 28 U.S.C. § 1915(e)(2) is the same as the standard under Rule 12(b)(6). De’Lonta v. Angelone, 330 F.3d 630, 633 (4th Cir. 2003). Therefore, the Court has already determined that Plaintiff has sufficiently stated a claim under Rule 12(b)(6) against Defendants for an Eighth Amendment violation. Defendants’ motion to dismiss is denied for the reasons stated in the Court’s prior Order.

IT IS, THEREFORE, ORDERED that:

1. Defendants’ Motion to Dismiss, (Doc. No. 22), is **DENIED**.

Signed: February 13, 2013

Handwritten signature of Robert J. Conrad, Jr. in cursive script, written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

