

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

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rather, he argues that he is currently partially paralyzed due to the presence of a bullet in his skull and that the fall *could have* caused severe injury by aggravating his existing conditions.

## II.

In order to state a claim of constitutional significance regarding prison conditions or medical treatment, a plaintiff must allege, among other things, facts sufficient to show either that he has sustained a serious or significant mental or physical injury or that the conditions or medical treatment pose an unreasonable risk of serious damage to his future health. Strickler v. Waters, 989 F.2d 1375, 1380-81 (4th Cir. 1993); Helling v. McKinney, 509 U.S. 25 (1993). Shumake appears to allege only that the fall could have injured him, not that it did, and he admits that officials have since transferred him to a ground-floor cell. Thus, Shumake has failed to allege an injury or the risk of future injury and, therefore, has failed to state a claim upon which the court may grant relief. Moreover, to establish deliberate indifference to a medical need, Shumake must demonstrate that prison officials had knowledge of his objectively serious medical need but disregarded it; a mere demonstration of negligence will not suffice. See Farmer v. Brennan, 511 U.S. 825 (1994). Shumake does not deny that physicians examined him and recommended a transfer to a ground-floor cell. His allegations that prison officials unreasonably delayed in implementing the transfer amount, at most, to a claim of negligence, which is not cognizable under the Eighth Amendment.

## III.

For the stated reasons, the court dismisses Shumake's suit pursuant to § 1915A(b)(1).

ENTER: This 9th day of January, 2006.

  
UNITED STATES DISTRICT JUDGE