


U.S. DISTRICT COURT
WEST VIRGINIA
ROANOKE

MAR 05 2010

JOHN P. COLLINS, CLERK
BY:  CLERK

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

<p>FRED LEWIS WILSON,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p>v.</p> <p>SGT. B. COLLINS, <u>ET AL.</u>,</p> <p style="padding-left: 40px;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. 7:08CV00638</p> <p><u>ORDER</u></p> <p>By: Glen E. Conrad United States District Judge</p>
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In accordance with the accompanying memorandum opinion, it is hereby

ORDERED

as follows:

1. The motion for summary judgment filed by the nonmedical defendants (Dkt. No. 45)

is hereby **GRANTED** in part and **DENIED** in part:

a. As to Claims 1-5 and 7 (regarding the incident on November 3, 2007), defendants' motion is **GRANTED** on the ground that plaintiff failed to exhaust administrative remedies as required under 42 U.S.C. § 1997e(a), and these claims are dismissed without prejudice;

b. As to Claim 8 (regarding the incident on January 9, 2008), defendants' motion for summary judgment is **DENIED**, and this matter shall be set for trial before a seven-member jury in the United States Courthouse in Big Stone Gap, Virginia, at the court's earliest convenience;

c. As to Claim 10 (regarding the incident on September 22, 2008), the motion for summary judgment on the ground of failure to exhaust is **DENIED**, and this matter shall be set for trial before a seven-member jury in the United States Courthouse in Big Stone Gap, Virginia, at the court's earliest convenience;

2. The motions filed by the medical defendants as to the merits of plaintiff's claims (Dkt.

Nos. 20, 50, and 65) hereby **GRANTED** in part and **DENIED** in part:

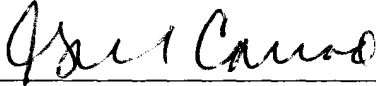
a. As to Claims 11 and 13(a) (alleging deliberate indifference by Dr. Thompson and Nurse Stanford regarding Wilson's alleged finger and ear injuries after September 22, 2008), the motions for summary judgment are denied, and this matter shall be set for trial before a seven-member jury in the United States Courthouse in Big Stone Gap, Virginia, at the court's earliest convenience;

b. As to Claims 6, 9(a), 9(b), 12, 13(b), and 13(c), regarding all of plaintiff's other medical complaints, the motions for summary judgment are **GRANTED**;¹ and

3. All claims alleging delay of dental treatment are **DISMISSED** without prejudice, because plaintiff pursued these claims in another, later-filed lawsuit, Civil Action No. 7:09CV00325, and has not developed them in this action.

The Clerk is directed to send copies of this order and the accompanying memorandum opinion to plaintiff and to counsel of record for the defendants.

ENTER: This 5th day of ~~February~~^{MARCH}, 2010.



United States District Judge

¹ Inasmuch as summary judgment is granted as to all claims against the following defendants, the clerk is **DIRECTED** to terminate them as parties to this lawsuit: Bishop, Boyd, Collins, Durham, Hileman, Hylton, Kilbourne, King, Spears, Williams, and Zeppa. The case shall go forward as to the following defendants only: Ely, Roberts, Stanford, Tabor, and Thompson.