

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 00-1031

Earl Mitchell,

Appellant,

v.

Charles H. Wagner; Dave Zioia; Jerry
Pancoke; Carrol Castelberry; Joel
Dalton, Director; James C. Fosket,

Appellees.

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* Appeal from the United States
* District Court for the
* District of Nebraska.

* [UNPUBLISHED]

Submitted: January 26, 2001
Filed: January 29, 2001

Before BOWMAN, BEAM, and LOKEN, Circuit Judges.

PER CURIAM.

Earl Mitchell, a Nebraska inmate, appeals the District Court's¹ adverse grant of summary judgment in his 42 U.S.C. § 1983 action in which he claimed that certain Hall County Corrections Department employees exposed him to deplorable cell conditions and used excessive force. After de novo review, see Buckley v. Rogerson, 133 F.3d 1125, 1126 (8th Cir. 1998), we agree with the District Court that defendants were

¹The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

entitled to qualified immunity on the unsanitary-conditions claim, see id. at 1128 (explaining that government officials have qualified immunity from suit unless their actions violate clearly established statutory or constitutional rights of which reasonable person would have known); Whitnack v. Douglas County, 16 F.3d 954, 957-58 (8th Cir. 1994). We conclude that the force Mitchell alleged was used did not rise to the level of a constitutional violation. See Jones v. Shields, 207 F.3d 491, 494-95, 497 (8th Cir. 2000).

Accordingly, we affirm. See 8th Cir. R. 47B. We deny Mitchell's motion to strike portions of appellees' brief.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.