

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

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No. 02-1841

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William Frank Marshall,

Appellant,

v.

Don Holloway, Sheriff of Pennington  
County, South Dakota,

Appellee.

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Appeal from the United States  
District Court for the  
District of South Dakota.

[UNPUBLISHED]

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Submitted: August 1, 2002  
Filed: August 14, 2002

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Before WOLLMAN, MORRIS SHEPPARD ARNOLD, and MELLOY, Circuit  
Judges.

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PER CURIAM.

William Marshall appeals from the district court's adverse grant of summary judgment and dismissal without prejudice of his 42 U.S.C. § 1983 claim. The district court determined that Marshall failed to exhaust his administrative remedies as required under 42 U.S.C. § 1997e(a). Because Marshall was not incarcerated or detained when he filed his complaint, we reverse and remand to the district court to consider his case on its merits. See Doe v. Washington County, 150 F.3d 920, 924 (8th Cir. 1998). We decline to affirm the judgment on a basis not considered by the

district court. See Cavegn v. Twin City Pipe Trades Pension Plan, 223 F.3d 827, 831 (8th Cir. 2000). We also deny Marshall's pending motion.

A true copy.

Attest:

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