

United States Court of Appeals
For the Eighth Circuit

No. 23-1608

Charlie Lewis Thornton, Jr.

Plaintiff - Appellant

v.

Jailer C/O Boysen; Warden John Benting, of Sioux Falls State Penitentiary,
in individual and official capacity; Dental/Medical, of Sioux Falls SD
Penitentiary, in official capacity; Department of Corrections, in individual and
official capacity; Associate Warden Ponto, of Sioux Falls State Penitentiary,
in individual and official capacity; Warden, Cook of Sioux Falls State
Penitentiary, in individual and official capacity

Defendants - Appellees

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

Submitted: September 13, 2023

Filed: September 18, 2023

[Unpublished]

Before LOKEN, SHEPHERD, and GRASZ, Circuit Judges.

PER CURIAM.

Former South Dakota inmate Charlie Thornton brought this 42 U.S.C. § 1983 action against the South Dakota Department of Corrections (SDDOC), prison wardens, and Jailer Boysen . He appeals the district court's¹ preservice dismissal of his claims against the SDDOC and the wardens, and the district court's adverse grant of summary judgment in favor of the officer for failure to exhaust administrative remedies.

Upon careful consideration of the record and the parties' arguments on appeal, we find no basis for reversal. *See Moore v. Sims*, 200 F.3d 1170, 1171 (8th Cir. 2000) (reviewing de novo 28 U.S.C. § 1915(e)(2)(B) preservice dismissal); *Townsend v. Murphy*, 898 F.3d 780, 783 (8th Cir. 2018) (reviewing de novo grant of summary judgment); *see also* 42 U.S.C. § 1997e(a) (exhaustion requirement). Accordingly, we affirm, but modify the dismissal of Thornton's failure-to-protect claim against Boysen to be without prejudice. *See* 8th Cir. R. 47B; *see also Porter v. Sturm*, 781 F.3d 448, 452 (8th Cir. 2015) (mandating dismissal without prejudice of unexhausted claim).

¹The Honorable Karen E. Schreier, United States District Court for the District of South Dakota.