

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

No. 98-3833

Mickey McWhirter,	*	
	*	
Appellee,	*	
	*	
v.	*	
	*	
Sgt. Percy Sargent, Cummins Unit,	*	
Arkansas Department of Correction;	*	
Keith Day, CO-I, Cummins Unit,	*	
Arkansas Department of Correction,	*	
	*	
Appellants,	*	Appeal from the United States
	*	District Court for the
S. Miller, CO-I, Cummins Unit,	*	Eastern District of Arkansas.
Arkansas Department of Correction;	*	
Murphy, CO-I, Cummins Unit,	*	[UNPUBLISHED]
Arkansas Department of Correction;	*	
M. D. Reed, Warden, Arkansas	*	
Department of Correction,	*	
	*	
Defendants,	*	
	*	
D. W. Tate, Captain, Arkansas	*	
Department of Correction,	*	
	*	
Appellant.	*	

Submitted: March 18, 1999
Filed: April 13, 1999

Before McMILLIAN, LOKEN, and MURPHY, Circuit Judges.

PER CURIAM.

Three correctional officers in the Arkansas Department of Correction bring this interlocutory appeal from the district court's¹ order denying their motion for summary judgment on the grounds of qualified immunity, in Mickey McWhirter's lawsuit against them under 42 U.S.C. § 1983. Having carefully reviewed the record and the parties' submissions, we conclude that this appeal raises issues of "evidence sufficiency," and that the fact-based qualified-immunity decision here is not appropriate for interlocutory appeal. See Behrens v. Pelletier, 516 U.S. 299, 312-13 (1996); Johnson v. Jones, 515 U.S. 304, 313 (1995); Woolfolk v. Smith, 81 F.3d 741, 743 (8th Cir. 1996) (per curiam). Accordingly, we dismiss this appeal for lack of jurisdiction. See 8th Cir. R. 47B.

A true copy.

Attest:

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

¹The Honorable George Howard, Jr., United States District Judge for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable H. David Young, United States Magistrate Judge for the Eastern District of Arkansas.