

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

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No. 04-3555

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Grady Newingham,

Appellant,

v.

David Westbrook, Sgt., Maximum Security Unit, ADC; Turoty Hayes, CO-I, Maximum Security Unit, ADC; Greg Harmon, Warden, Maximum Security Unit, ADC; Kay Wade, Corporal, Maximum Security Unit, ADC,

Appellees.

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\* Appeal from the United States  
\* District Court for the  
\* Eastern District of Arkansas.  
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\* [UNPUBLISHED]  
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Submitted: July 27, 2005  
Filed: August 9, 2005

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Before MELLOY, MAGILL, and GRUENDER, Circuit Judges.

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PER CURIAM.

Arkansas inmate Grady Newingham appeals the district court's<sup>1</sup> dismissal of his 42 U.S.C. § 1983 action against various prison employees for failure to exhaust administrative remedies. We affirm, but modify the dismissal to be without prejudice and clarify that the dismissal does not count as a "strike" under 28 U.S.C. § 1915(g).

Dismissal is merited because Newingham failed to show he exhausted his administrative remedies as to his claim that Defendant Arkansas Department of Correction Director Larry Norris failed to protect him from an assault. See Kozohorsky v. Harmon, 332 F.3d 1141, 1143 (8th Cir. 2003). Newingham's argument on appeal that administrative remedies were unavailable to him because they did not provide for monetary relief is without merit. See Booth v. Churner, 582 U.S. 731, 734 (2001).

Accordingly, we affirm.

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<sup>1</sup>The Honorable J. Leon Holmes, United States District Judge for the Eastern District of Arkansas, adopting the report and recommendation of the Honorable Henry L. Jones, Jr., United States Magistrate Judge for the Eastern District of Arkansas.