

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

No. 05-2024

David P. Leonard,	*
	*
Appellant,	*
	*
v.	* Appeal from the United States
	* District Court for the
	* Eastern District of Missouri.
Tanya S. Muhm,	*
	* [UNPUBLISHED]
Appellee,	*
	*
Christine R. Sullivan,	*
	*
Defendant,	*
	*
Donald L. Crump; Alan Stahls;	*
Unknown McKee	*
	*
Appellees.	*

Submitted: May 19, 2006
Filed: May 22, 2006

Before ARNOLD, BYE, and SMITH, Circuit Judges.

PER CURIAM.

Missouri inmate David P. Leonard appeals the district court's¹ dismissal of some claims, and its grant of summary judgment on the remaining claims, in his 42 U.S.C. § 1983 action.

The district court did not err by dismissing the claims for damages against defendants Donald L. Crump and Tanya S. Muhm as barred by Heck v. Humphrey, 512 U.S. 477 (1994), although the dismissal should have been without prejudice. See Moore v. Sims, 200 F.3d 1170, 1171 (8th Cir. 2000) (per curiam) (standard of review); Schafer v. Moore, 46 F.3d 43, 45 (8th Cir. 1995) (per curiam) (Heck-barred § 1983 action should be dismissed without prejudice). We also agree with the district court that Leonard failed to produce evidence from which a jury could conclude that defendants Alan Stahl and Michael McKee knew of and were deliberately indifferent to a substantial risk of serious injury to Leonard, and thus summary judgment was properly granted to these defendants. See Crow v. Montgomery, 403 F.3d 598, 601-02 (8th Cir. 2005) (discussing failure-to-protect claim involving pretrial detainee); Jolly v. Knudsen, 205 F.3d 1094, 1096 (8th Cir. 2000) (summary judgment standard of review). As to Leonard's claim that his appointed counsel provided ineffective assistance, this is not a basis for reversal. See Glick v. Henderson, 855 F.2d 536, 541 (8th Cir. 1988).²

Accordingly, we affirm, see 8th Cir. R. 47B, but we modify the dismissal of the claims against Muhm and Crump to be without prejudice.

¹The Honorable Carol E. Jackson, Chief Judge, United States District Court for the Eastern District of Missouri.

²Leonard also complains that the district court refused to accept his pro se post-judgment motion, because he was represented by counsel. We lack jurisdiction to review this claim because Leonard did not appeal this decision. See Brode v. Cohn, 966 F.2d 1237, 1240 (8th Cir. 1992).