

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

No. 06-3491

Michael Duane Marlin,

Appellant,

v.

J. Jimenez; E J Prince, Dr.; S. Dawson;
S. Smith; J. Dube-Gilley; G. Toliver;
E. Taylor; L. Sanders; G. Thompson,
Assistant Warden; Emma J. Mitchell,
Region Health Services Administrator,

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* [UNPUBLISHED]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: June 23, 2008

Filed: June 27, 2008

Before MURPHY, COLLOTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

Federal inmate Michael Duane Marlin appeals the district court's¹ adverse grant of summary judgment in his action brought under Bivens v. Six Unknown Named

¹The Honorable J. Leon Holmes, Chief Judge, United States District Court for the Eastern District of Arkansas, adopting in part the report and recommendations of the Honorable John F. Forster, Jr., United States Magistrate Judge for the Eastern District of Arkansas.

Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). Having carefully reviewed the record and considered Marlin's arguments, we find no basis for reversal. See Popoalii v. Corr. Med. Servs., 512 F.3d 488, 499 (8th Cir. 2008) (standard of review). However, the claims against defendant E. Taylor arose from alleged failures that occurred shortly before the instant lawsuit was filed, and thus Marlin could not have administratively exhausted those claims before filing suit and dismissal was required. See Johnson v. Jones, 340 F.3d 624, 626-28 (8th Cir. 2003). Accordingly, we affirm, but we revise the dismissal of the claims against defendant Taylor to be without prejudice. See 8th Cir. R. 47B. We also deny Marlin's motion for appointment of counsel.
