10-3536-pr
Bennett v. James

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 20th day of December, two thousand eleven.

PRESENT: JOSEPH M. MCLAUGHLIN,
GUIDO CALABRESI,
REENA RAGGI,
Circuit Judges.

DONALD BENNETT,
Plaintiff-Appellant,

v. No. 10-3536-pr

TRACEY JAMES, DR. GOLDBERG, Dr. of Chronic Care at Westchester County Jail Health Services,
Defendants-Appellees.

FOR APPELLANT: Donald Bennett, pro se, Valhalla, New York.

FOR APPELLEES: Thomas G. Gardiner, Senior Assistant County Attorney, James Castro-Blanco, Chief Deputy County Attorney, *on behalf of* Robert F. Meehan, Westchester County Attorney, White Plains, New York.

Appeal from the United States District Court for the Southern District of New York (Gabriel G. Gorenstein, *Magistrate Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment entered on September 16, 2010, is AFFIRMED.

Appellant Donald Bennett, proceeding pro se, appeals the district court's grant of summary judgment dismissing his 42 U.S.C. § 1983 complaint for failure to exhaust administrative remedies pursuant to 42 U.S.C. § 1997e(a). We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review de novo a district court's grant of summary judgment, with the view that "[s]ummary judgment is appropriate only if the moving party shows that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law." Miller v. Wolpoff & Abramson, L.L.P., 321 F.3d 292, 300 (2d Cir. 2003). Further, we review de novo a district court's ruling on whether a plaintiff has exhausted his administrative remedies. See Ortiz v. McBride, 380 F.3d 649, 653 (2d Cir. 2004).

Upon such review, we conclude that Bennett's appeal is without merit substantially for the reasons articulated by the magistrate judge in his well-reasoned decision. See Bennett v. James, 737 F. Supp. 2d 219 (S.D.N.Y. 2010). We have considered all of Bennett's arguments on appeal and find them to be without merit.

For the foregoing reasons, the judgment is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court