

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALGENONE WILLIAMS,

Plaintiff,

v.

JAN MINK, CHRISTI DIETZ,
STEVE SCHNEIDER and JOHN PACQUIN,

Defendants.

OPINION AND ORDER

00-C-0451-C

Plaintiff Algenone Williams was granted leave to proceed in forma pauperis on his claim that defendants Jan Mink, Christi Dietz, Steve Schneider and John Pacquin knew that he was living in a cell flooded with fecal matter and urine from February 21 to May 2, 2000, and that they allowed him to remain in those conditions in violation of the Eighth Amendment.

On January 31, 2002, defendants filed a motion for summary judgment contending that plaintiff had failed to exhaust his administrative remedies and that his cell conditions were not inhumane. According to the briefing schedule in the magistrate judge's preliminary pretrial conference order, plaintiff had until February 21, 2002, in which to oppose the

motion. On February 27, 2002, the court received plaintiff's motion for a 20-day enlargement of time in which to respond to defendants' motion for summary judgment. In an order dated March 6, 2002, the magistrate judge gave plaintiff until March 15, 2002, to file his response to defendants' motion and stated that "no further extensions shall be granted."

On March 18, 2002, the court received plaintiff's brief in response to defendants' motion for summary judgment. However, plaintiff did not file any proposed findings of fact or responses to defendants' proposed facts even though he had received instructions to do so. See Prelim. Pretrial Conf. Order, Sept. 13, 2001, dkt. #26. Specifically, the court's instructions regarding motions for summary judgment state that "[a]ll facts necessary to sustain a party's position on a motion for summary judgment must be explicitly proposed as findings of fact" and that "[a] fact properly proposed by one side will be accepted by the court as undisputed unless the other side properly responds to the proposed fact and establishes that it is in dispute." Id. In addition, defendants informed plaintiff in their motion for summary judgment that the court would accept as true all factual assertions made by them unless plaintiff disputed those assertions and submitted affidavits or other documentary evidence in support of plaintiff's contrary position. Defendants also provided plaintiff with the language of Fed. R. Civ. P. 56(e) and (f) in their motion.

In any event, even assuming plaintiff's allegations in his brief regarding administrative

exhaustion are true, I find that he has failed to exhaust his administrative remedies. Accordingly, I will grant defendants' motion for summary judgment.

From the findings of fact proposed by defendants and the record, I find the following material facts to be undisputed.

UNDISPUTED FACTS

From July 13, 1998 until May 2, 2000, plaintiff Algenone Williams was a Wisconsin inmate housed at the North Fork Correctional Facility in Sayre, Oklahoma. The Corrections Corporation of America operates the North Fork facility. Defendants Jan Mink, Christi Dietz, Steve Schneider and John Pacquin are contract monitors for the Wisconsin Department of Corrections.

On February 1, 2000, plaintiff started a fire in his segregation cell. Plaintiff was removed from his cell and allowed to shower. After plaintiff showered, he returned to his cell, which had been cleaned as shown on videotape. (According to plaintiff, the cell had not been cleaned. Although plaintiff concedes in his brief that the videotape clip does not reflect the unclean conditions that he alleged in his complaint, he states that "you can clearly see the yellowish/brown hue on the walls, when the camera is held at an accommodating angle.")

On February 21, 2000, plaintiff flooded his cell by clogging his toilet with toilet tissue because he was angry that he had not been given a shower. Plaintiff had flooded his cell on

other occasions but he cannot recall the dates. According to plaintiff, the resulting flood of fecal matter, urine and toilet tissue clumps was never cleaned from his cell.

On May 2, 2000, plaintiff was transferred from North Fork to the Supermax Correctional Institution in Boscobel, Wisconsin.

As of May 8, 2001, plaintiff had filed only one inmate complaint (SMCI-2000-17937) relating to conditions or incidents at North Fork Correctional Facility is complaint number, which he filed on June 21, 2000. That complaint was dismissed on June 22, 2000, and plaintiff did not appeal the dismissal.

According to plaintiff's brief, on February 5, 2002, five days after defendants filed their motion for summary judgment in this case, plaintiff filed an inmate complaint (SMCI-2002-4792) regarding his cell conditions at the North Fork facility. The examiner dismissed this complaint because plaintiff's allegations were two years old and had not been filed within the 14-day time limit.

OPINION

Defendants argue that plaintiff failed to exhaust his administrative remedies and, as a result, the court should grant summary judgment in their favor. Plaintiff argues that it would be "absurd" to believe that after he had been removed from North Fork and transferred to Supermax, an inmate complaint examiner at Supermax would go to an out-of-

state facility to investigate his allegations and, therefore, he has exhausted his administrative remedies. (Plaintiff also asserts in a conclusory manner that he has exhausted his administrative remedies with regard to the February 1, 2000 incident even though he “can’t locate [his] copy of the grievance.” However, the court granted plaintiff’s request for leave to proceed in forma pauperis only as to his claim of inhumane cell conditions for the period of February 21 to May 2, 2000.)

The Court of Appeals for the Seventh Circuit has held that “a suit filed by a prisoner before administrative remedies have been exhausted must be dismissed; the district court lacks discretion to resolve the claim on the merits.” Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 535 (7th Cir. 1999); see also Massey v. Helman, 196 F.3d 727 (7th Cir. 1999). The court of appeals has made clear that “[t]here is no futility exception to § 1997e(a),” Perez, 182 F.3d at 537; see also Massey, 196 F.3d at 733, and that a prisoner’s request for monetary damages that are unavailable under the administrative complaint system does not allow a prisoner to avoid § 1997e’s exhaustion requirement, see Perez, 182 F.3d at 537-38. “The potential effectiveness of an administrative response bears no relationship to the statutory requirement that prisoners first attempt to obtain relief through administrative procedures.” Massey, 196 F.3d at 733. Even if plaintiff suspected that his inmate complaint and appeals would not lead to a judgment in his favor or an investigation, he was required to complete the process of administrative review.

Alternatively, plaintiff argues that the court should stay this action because he has begun to exhaust his administrative remedies by filing an inmate complaint five days after defendants filed their motion for summary judgment in this case. However, plaintiff cannot exhaust administrative remedies after he commences a lawsuit. Simply put, plaintiff did not satisfy either Wis. Admin. Code § DOC 310.04, which requires that *before* filing a lawsuit, an inmate must file an inmate complaint, have an adverse decision reviewed and receive a decision from the secretary of the department, or 42 U.S.C. § 1997e(a), which requires a prisoner to exhaust his administrative remedies *before* filing his lawsuit. See also Perez, 182 F.3d at 537.

Because plaintiff has failed to exhaust his administrative remedies, I will grant defendants' motion for summary judgment. Accordingly, it is unnecessary to examine plaintiff's claim on the merits or his pending motion to compel discovery.

ORDER

IT IS ORDERED that

1. Defendants Jan Mink, Christi Dietz, Steve Schneider and John Pacquin's motion for summary judgment is GRANTED for plaintiff Algenone Williams's failure to exhaust administrative remedies;

2. Plaintiff's pending motion to compel documents and interrogatories is DENIED

as moot;

3. Plaintiff's cause of action is DISMISSED with prejudice; and
4. The clerk of court is directed to close this file.

Entered this 20th day of March, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge