

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

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MARK GRANSBERRY,

Plaintiff,

v.

WISCONSIN DEPARTMENT OF  
CORRECTIONS UNIT MANAGER  
ELISABETH TEGELS,

Defendant.

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ORDER

02-C-598-C

Plaintiff Mark Gransberry was granted leave to proceed in this action on his claims that defendant Tegels retaliated against him for filing a grievance about his cell mate and disciplined him on the basis of his race. On January 17, 2003, defendant moved to dismiss plaintiff's claims for his failure to exhaust administrative remedies. Alternatively, defendant moved to dismiss plaintiff's claims under the holding in Heck v. Humphrey, 512 U.S. 477 (1994), arguing that the claims imply the invalidity of his conduct report. In a briefing schedule established on January 22, 2003, the court gave plaintiff until February 12, 2003, in which to oppose the motion. Plaintiff has not opposed the motion or written to explain his failure to do so.

From a review of defendant's unopposed motion and affidavit in support, I conclude

that plaintiff has failed to fully exhaust his administrative remedies with respect to his retaliation and discrimination claims because he has not followed the procedures the state has established for that process. Because I am granting defendant's motion to dismiss on the ground that plaintiff has failed to exhaust his administrative remedies, I need not address defendant's argument that Heck should be applied to the factual circumstances of this case, in which plaintiff's disciplinary penalty was a period of cell confinement and extra duty. I would point out to defendant, however, that he may wish to re-read DeWalt v. Carter, 224 F.3d 607 (7th Cir. 2000), to determine whether the holding in Stone-Bey v. Barnes, 120 F.3d 718 (7th Cir. 1997), on which he relies to make his argument has been overruled.

ORDER

IT IS ORDERED that defendant's unopposed motion to dismiss is GRANTED and this case is DISMISSED without prejudice for plaintiff's failure to exhaust his administrative remedies.

Entered this 25th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge