

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

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CEDRIC R. JOHNSON,

Plaintiff,

v.

JON E. LITSCHER, Secretary of the
Wisconsin Department of Corrections,
in his official capacity, and DONALD
G. BANEY, JOANNE BARTON,
THOMAS BORGEN, KEVIN CANNON,
JASON MacPHETRIDGE, CLYDE
MAXWELL, DENNIS MEYER, ERIN
RICHARDS, and JESS ROONEY, in their
personal capacities,

Defendants.

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ORDER

00-C-0401-C

Plaintiff Cedric R. Johnson is seeking an injunction requiring defendants to return him to Fox Lake Correctional Institution during the pendency of his appeal of this court's July 24, 2000 decision denying his request for injunctive relief and dismissing this action for plaintiff's failure to exhaust his administrative remedies before bringing suit. Plaintiff contends that he has a reasonable likelihood of succeeding on his appeal, that the balance of harms weighs in his

favor and the public interest favors his request.

Plaintiff concedes that the decision to dismiss his suit for lack of exhaustion is “certainly within the mainstream” but because it addressed unsettled issues of law, reasonable jurists could disagree. I am not persuaded that there is any measurable room for difference in this instance. Plaintiff was challenging retaliation on the part of prison authorities motivated allegedly by his victory in a lawsuit against the department's medical director. Despite the fact that he had had numerous opportunities to complain about the conduct reports that he believed were evidence of this retaliation, he never made prison officials aware of his complaint or raised the issue in the administrative review process and he was unable to offer any plausible justification for his failure to do so. I conclude that it is unlikely that any reasonable jurist would hold that the PLRA's exhaustion requirement did not apply to plaintiff.

As to the balance of harms, plaintiff has not shown that he is injured by having been moved to a higher security level institution. The move “falls within the expected perimeters of the sentence imposed.” Sandin v. Conner, 515 U.S. 472, 485 (1995). Plaintiff has been kept in disciplinary segregation at Fox Lake for a considerable period of time over the last few months, which would have eliminated his opportunities to participate in educational, vocational and social programs. This diminishes the force of his argument that a transfer from Fox Lake would deny him these opportunities. To the contrary, his transfer to a higher security

level facility may result in his being able to leave segregation and take his place in the general population. Not only has plaintiff failed to show that he will suffer any significant harm if the injunction is not entered, defendants may well be able to show that they would be the ones that would suffer if an injunction were to be entered. Interfering with the department's authority to transfer inmates could cause harm to defendants if it left them fewer options for disciplining and housing the inmates in their care.

Plaintiff has not shown that the public interest would be served by granting him an injunction. Accordingly, I conclude that his motion for an injunction pending appeal must be denied.

ORDER

IT IS ORDERED that plaintiff Cedric R. Johnson's motion for an injunction pending appeal is DENIED.

Entered this 7th day of August, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge