

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

RONALD ROBINSON,

Plaintiff,

v.

WARDEN J.T. O'BRIEN,
COUNSELOR M. KLAWITTER,
COUNSELOR K. ZOOK, CASE
MANAGER M CISKE, UNIT MANAGER
S. ROBINSON, L.T.R.E. ROBINSON,
D.H.O. W.W. SKIDERSKI,

Defendants.

ORDER

03-C-32-C

Plaintiff Ronald Robinson has filed a motion to reconsider an order dated March 4, 2003, in which I dismissed this action for plaintiff's failure to exhaust his administrative remedies. Plaintiff argues again that he did exhaust his administrative remedies, referring the court to documents showing that he filed a grievance and appealed to the appropriate reviewing authorities as required by the federal regulations.

As I pointed out in the March 4 order, to successfully exhaust administrative remedies, an inmate must file his grievances in accordance with the prison's procedures,

which include timeliness requirements. Plaintiff failed to file his complaint within the 20 days allowed under 28 C.F.R. § 542.14 so his grievance was dismissed. The court of appeals has stated that a failure to follow a prison's timeliness requirement bars the inmate from filing suit in federal court. Pozo v. McCaughtry, 286 F.3d 1022, 1024 (7th Cir. 2002).

Plaintiff argues next that because exhaustion is an affirmative defense, this court erred in dismissing his case before defendants filed a motion to dismiss. Plaintiff is correct that, generally, a court should not raise an affirmative defense on its own. Massey v. Helman, 196 F.3d 727 (7th Cir. 1999). In this case, however, plaintiff alleged in his complaint that his grievances had been dismissed as untimely, so it was clear that plaintiff had not exhausted his administrative remedies. In such a case, the court does not have to wait for the inevitable motion to dismiss. Gleash v. Yuswak, 308 F.3d 758, 760-61 (7th Cir. 2002); Walker v. Thompson, 288 F.3d 1005, 1009-10 (7th Cir. 2002); see also Ray v. Kertes, 285 F.3d 287 (3d Cir. 2002) (“[S]ua sponte dismissal is inappropriate *unless the basis is apparent from the face of the complaint.*”) (emphasis added). In short, plaintiff has not persuaded me that I erred in dismissing this action. Plaintiff's motion for reconsideration will be denied.

ORDER

IT IS ORDERED that plaintiff Ronald Robinson's motion for reconsideration is

DENIED.

Entered this 17th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge