

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

JAMES KURALLE,

Plaintiff,

v.

KRISTEN ANDERSON,

Defendant.

OPINION AND
ORDER

04-C-184-C

This is a civil action for monetary relief brought under 42 U.S.C. § 1983. Plaintiff James Kuralle claims that he was subjected to cruel and unusual punishment by defendant Kristen Anderson, a deputy at the St. Croix County jail. Plaintiff alleges that defendant failed to prevent a fellow inmate from attacking him. Now before the court is defendant's motion for summary judgment, in which she argues that (1) plaintiff cannot prove that she acted with deliberate indifference to a serious threat to plaintiff's safety; (2) plaintiff failed to exhaust administrative remedies; and (3) defendant is entitled to protection under the doctrine of qualified immunity. Jurisdiction is present under 28 U.S.C. § 1331.

Defendant's motion will be granted. Plaintiff has failed to avail himself of administrative procedures available at the St. Croix County jail. He has not even filed a

grievance, let alone pursued appeals. Because he has failed to exhaust all administrative requirements available to him, the Prison Litigation Reform Act bars him from seeking recovery in an action under 42 U.S.C. § 1983.

From the parties' proposed findings of fact and the record, I find the following to be material and undisputed.

UNDISPUTED FACTS

Plaintiff James Kuralle is an inmate who was incarcerated at St. Croix County jail in St. Croix, Wisconsin, between April 4, 2003 and June 5, 2003. Defendant Kristen Anderson was a deputy at the St. Croix facility at all relevant times.

Scott Blom had been detained at the St. Croix facility after being charged with several felonies. Plaintiff had been charged for his involvement with these crimes and was being detained at the St. Croix facility also.

Inmates interested in participating in daily activities at the jail must sign up for them in the morning or ask the control room, via the intercom, to be placed on the list. On May 16, 2003, Blom signed up for church services. When the church service representatives arrived at the jail, Deputy Sally Dellemann went to each block to call off the names of those who had signed up to attend the church program that day. Dellemann first read off the names of the maximum security inmates who had signed up for the program to the officers

in central controls room. The officers released these inmates to go down the hallway and into the church service classroom. Blom was in this group of maximum security inmates.

There were several inmates who had signed up to go to the church program initially, but decided not to go. Plaintiff asked to fill one of the vacancies. The St. Croix facility allows inmates to fill up the list for religious programming if vacancies arise and there are sufficient instructors to lead the program, so Deputy Dellemann added plaintiff to the list. Because plaintiff was in Block A, a minimum-to-medium level security unit, his group was called individually and not read off to the officers in the central controls room.

After plaintiff's name was added to the list by Deputy Dellemann, plaintiff put his identification card on the window ledge by his block and proceeded to the church service classroom. Approximately 60 seconds later, Deputy Jason Sykora radioed that he need assistance because there was a fight in progress in the church service classroom.

Deputy Sheriff Mike Dishno, Dellemann, Deputy Frank Otis and defendant responded immediately to the church service classroom. Dishno entered the room and ordered everyone to sit down. He observed plaintiff and Blom swinging at each other in the corner of the room. Dishno approached the fighting inmates and verbally directed plaintiff and Blom to stop fighting. Dellemann followed Dishno, grabbed Blom's arm and escorted him to the hallway. Defendant assisted Dellemann in handcuffing and removing Blom from the incident scene. Meanwhile, Otis and Dishno removed plaintiff from the room and

handcuffed him. Both plaintiff and Blom blame each other for instigating the fight.

The jail maintains a “white board” in the central controls room that contains the inmate roster and a list indicating those inmates who should not be in contact with each other. After the incident, Deputy Dellemann checked the white board and noticed that both plaintiff and Blom were on the “no-contact” list. Plaintiff and Blom were on the list because they had been brought to the St. Croix facility for their involvement in circumstances arising from the same criminal incident. Plaintiff and Blom had had no previous altercation at the St. Croix facility with each other or with any other inmate.

Dellemann did not let plaintiff and Blom together in the church service classroom knowing or intending an altercation to arise between them. Similarly, defendant did not direct, know about or consent to plaintiff’s placement in the room with Blom. Defendant did not know that plaintiff was permitted to sign up on the church list at the last minute or that Blom was already on the list. The jail staff did not intend for a fight to occur.

Following the altercation, plaintiff received treatment and medication from the St. Croix facility health care provider on duty. Plaintiff had bruising on his anterior torso and hands and small abrasions to his knuckles.

The St. Croix facility has an Inmate Handbook, which contains the policy and procedure for “inmate grievances.” Each inmate receives a handbook upon booking. The first stage of the grievance process consists of an “informal discussion” between the grievant

and the staff. If the inmate is not satisfied with the outcome of the “informal discussion,” the inmate may request a grievance form from the staff. The decision on the grievance can be appealed to the jail captain within fifteen days. If still unsatisfied, the inmate has fifteen days to appeal to the sheriff.

Plaintiff did not attempt to informally resolve the problem with the jail staff, file a grievance or pursue any administrative appeal regarding a failure to protect claim.

OPINION

The Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), prohibits the bringing of any action “with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” Section 1997(a)'s exhaustion requirement is mandatory and applies to all prisoners seeking redress for wrongs occurring in prison. Porter v. Nussle, 534 U.S. 516 (2002). Because a district court lacks discretion to resolve a claim on the merits unless a prisoner has exhausted all administrative remedies available to him, 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), I must address defendant's failure to exhaust argument first.

Defendant argues that because plaintiff did not avail himself of his right to file a

grievance and appeal to the jail captain and the county sheriff, he has failed to meet the Prison Litigation Reform Act's exhaustion requirement. Plaintiff has attempted to dispute defendant's proposed finding of fact regarding his failure to use the jail's grievance procedures with an assertion that he spoke with defendant about the incident. First, simply talking with Sergeant Anderson does not satisfy the exhaustion requirement. Construing this assertion in the light most favorable to plaintiff, this conversation could be construed as an "informal discussion." However, inmates are required to exhaust all administrative remedies available to them. See 42 U.S.C. § 1997e(a). In this case, that includes asking for a grievance form, submitting it to the appropriate officer and pursuing appeals of adverse decisions. Plaintiff does not dispute that he failed to take these actions. Second, plaintiff has not supported his assertion with appropriate evidence. The evidence to which he cites does not relate to the exhaustion issue.

Failure to exhaust is an affirmative defense under Fed. R. Civ. P. 8(c) for which defendant bears the burden of proof. Massey, 196 F.3d at 735 . Defendant has shown that plaintiff did not follow the grievance process as outlined in the Inmate Handbook. Even if plaintiff spoke with defendant regarding the incident, that is only the first step in the grievance process and for that reason, does not satisfy the exhaustion requirement. Because defendant has shown that plaintiff failed to exhaust administrative remedies, I do not need to turn to the substance of plaintiff's claim.

ORDER

IT IS ORDERED that defendant Kristen Anderson's motion for summary judgment on plaintiff James Kuralle's claim that she violated his constitutional rights by failing to protect him against an attack by a fellow inmate is GRANTED. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 13th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge