

that courts should not dismiss a prisoner's action for failure to exhaust if the petitioner has proof that he made efforts to use the grievance system but was blocked in those efforts by jail officials. Dale v. Lappin, 376 F.3d 652, 656 (7th Cir. 2004). Nevertheless, I gave petitioner until November 26, 2004, in which to supplement his complaint to identify a lawsuit he had been unable to pursue and the name of the court in which the suit was filed and dismissed for his failure to exhaust his administrative remedies. I told petitioner that if, by November 26, 2004, he failed to identify the lawsuit he had been prevented from pursuing because of respondents' refusal to give him grievance forms, I would deny his request for leave to proceed in forma pauperis for his failure to state a claim upon which relief may be granted.

Now petitioner has filed a "supplement for complaint." In this document, petitioner repeats his claim that he was refused grievance forms to complain about certain conditions at the Dane County jail. In addition, he admits that he did not challenge any of these conditions in a court of law. Petitioner's failure to file a lawsuit challenging the conditions that he was refused the opportunity to grieve precludes a finding of actual injury. His claim is premised on nothing more than a baseless speculation that respondents would have moved to dismiss his claims for failure to exhaust and the judge would have granted the motion, despite petitioner's showing of respondents' efforts to prevent him from using grievance procedure. Therefore, petitioner's request for leave to proceed in this action in forma

pauperis will be denied for petitioner's failure to state a claim of a violation of his constitutional right of access to the courts.

ORDER

IT IS ORDERED that

1. Petitioner's request for leave to proceed in forma pauperis is DENIED and this case is DISMISSED for petitioner's failure to state a claim upon which relief may be granted;
2. The unpaid balance of petitioner's filing fee is \$150; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2);
3. A strike will be recorded against petitioner pursuant to § 1915(g); and
4. The clerk of court is directed to close the file.

Entered this 24th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge