

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

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SCOTT REIDELL,

Plaintiff,

ORDER

v.

05-C-667-C

CO RON GRAY, in his individual capacity,

Defendant.  
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In this civil action, plaintiff Scott Reidell was allowed to proceed on claims that defendant Ron Gray used excessive force against him and retaliated against him for filing an offender complaint about the matter by issuing him a conduct report. In an order dated May 9, 2006, I granted defendant's motion to dismiss the retaliation claim on the ground that plaintiff had failed to exhaust his administrative remedies with respect to it. Now plaintiff has filed a letter postmarked May 16, 2006, in which he appears to be seeking reconsideration of that decision. Because plaintiff has made no showing that he mailed a copy of his motion to Ma Manee Moua, counsel for defendant, as he is required to do, I am sending her a copy with a copy of this order. In the future, however, I expect plaintiff to serve defendant's lawyer with a copy of every submission he sends to this court and to show

on the court's copy that he has done so. If he fails to do so, I will not consider the submission.

Plaintiff's motion for reconsideration will be denied. Plaintiff was given an opportunity to oppose defendant's motion before I ruled on it. He used that opportunity to file a brief in which he argued against dismissal of the claim. However, he did not submit proof that he had filed an inmate complaint raising his retaliation claim and appealing any adverse decision he might have received. In support of his motion for reconsideration, plaintiff argues that he could not have filed an inmate complaint alleging retaliation because the "ticket" was dismissed. I understand plaintiff to be saying that he believes that when the conduct report defendant Gray allegedly lodged against him was dismissed, he could not raise his claim of retaliation against Gray because the decision was favorable to him and an appeal was unnecessary.

I am aware from having decided other cases involving claims that a conduct report was issued against the plaintiff in retaliation for his having engaged in conduct protected by the First Amendment, that if plaintiff had filed an inmate complaint alleging that the conduct report was retaliatory while disciplinary proceedings against him were pending, the complaint would have been rejected as outside the scope of the inmate grievance procedure. DOC § 310.08(2)(a). This is presumably because challenges to the validity of a conduct report can be raised in the context of the disciplinary proceedings as a defense to the charges.

Only after the disciplinary process is utilized may an inmate file an inmate complaint on an issue related to a conduct report. Id. This means that plaintiff could have succeeded in showing that he exhausted his administrative remedies with regard to his retaliation claim by submitting proof either that he raised his retaliation claim as a defense to the conduct report and that the conduct report was promptly dismissed, or that he filed an inmate complaint raising his retaliation claim after the disciplinary proceedings had concluded. Plaintiff did neither of these things. Therefore, he cannot succeed on his contention that this court erred in concluding that dismissal of the retaliation claim was proper.

#### ORDER

IT IS ORDERED that plaintiff's motion for reconsideration of the May 9, 2006 decision granting defendant's motion to dismiss his retaliation claim is DENIED.

Entered this 19th day of May, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge