

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

TERRANCE GRISSOM,

Plaintiff,

v.

MEMORANDUM AND ORDER
07-C-266-S

DYLON RADTKE, JANEL NICKEL
and GREG GRAMS,

Defendants.

Plaintiff Terrance Grissom was allowed to proceed on his Eighth Amendment claim that defendants Dylan Radtke, Janel Nickel and Greg Grams assaulted him while he was incarcerated at the Columbia Correctional Institution, Portage, Wisconsin.

On June 11, 2007 defendants moved to dismiss plaintiff's complaint for failure to exhaust administrative remedies. Pursuant to this Court's June 19, 2007 scheduling order plaintiff's brief in opposition to this motion was to be filed not later than July 2, 2007 and has not been filed to date.

FACTS

Plaintiff is currently incarcerated at the Columbia Correctional Institution, Portage, Wisconsin (CCI). Defendants Dylan Radtke, Janel Nickel and Greg Grams are employed at CCI.

Plaintiff alleges that defendants assaulted him on May 4, 2007. He did not file an inmate complaint concerning this incident.

MEMORANDUM

Defendants move to dismiss plaintiff's complaint for failure to exhaust his administrative remedies pursuant to 42 U.S.C. § 1997e(a). No action shall be brought with respect to prison conditions by a prisoner confined in any jail, prison or other correctional facility until available administrative remedies are exhausted. Prisoners must file their complaints and appeals in the place and at the time the prison's administrative rules require. Pozo v. McCaughtry, 286 F. 3d 1022, 1025 (7th Cir. 2002)

In Perez v. Wisconsin Department of Corrections, 182 F.3d 532, 535 (7th Cir. 1999), the Court held as follows:

...a suit filed by a prisoner before administrative remedies have been exhausted must be dismissed; the district court lacks discretion to resolve the claim on the merits, even if the prisoner exhausts intra-prison remedies before judgment.

Plaintiff did not file any inmate complaint concerning the allegations in his complaint. Accordingly, Perez requires dismissal of plaintiff's complaint because he did not exhaust his administrative remedies prior to commencing this action.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already

provided to undermine this Court's conclusion that his complaint must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that defendants' motion to dismiss for plaintiff's failure to exhaust his administrative remedies is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint without prejudice for his failure to exhaust his administrative remedies.

Entered this 9th day of July, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge