

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

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PARKER OSTRANDER,

Plaintiff,

v.

ORDER

RICHARD HEIDORN, JIM SCHWOCHERT and  
JOHN DOES,

11-cv-228-slc

Defendants.

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This is a civil action for monetary relief brought under 42 U.S.C. § 1983. Parker Ostrander has been granted leave to proceed on his claim that defendant Heidorn, a doctor at the prison where plaintiff was incarcerated, violated plaintiff's right to medical care under the Eighth Amendment by failing to diagnose a cancerous tumor on plaintiff's spine, and that other unnamed defendants violated the Eighth Amendment when they forced him to sleep on a top bunk and then failed to provide him with adequate care after he fell off the bunk. (Plaintiff was granted leave to proceed against defendant Schwochert, the warden at the Dodge Correctional Institution, for the purpose of discovering the identities of the unnamed defendants.)

On August 31, 2011, defendants moved for summary judgment, asserting that plaintiff failed to exhaust his administrative remedies with respect to all of the claims raised in his lawsuit before he filed it. *See* dkt. 23. In support of their motion, defendants have submitted an affidavit from Welcome Rose, a Corrections Complaint Examiner for the Department of Corrections. Rose avers that she has conducted a diligent search of the Department's record of appeals of inmate complaints, but has found no inmate complaint by plaintiff that addresses the allegations in his complaint. Rose has attached to her affidavit a copy of plaintiff's Inmate Complaint History Report, which shows that the only complaint he filed was in May 2011 regarding a different doctor's decision to take him off his pain medication. *See* dkt. 25.

Plaintiff's response initially was due September 15, 2011, but the court extended his deadline to September 23, 2011 at plaintiff's request. It is now October 11, 2011 and plaintiff has filed no opposition to defendants' motion.

Under the 1996 Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), a prisoner who wishes to file a civil lawsuit regarding prison conditions, including particular episodes, must first exhaust the administrative remedies that are available to him. *Porter v. Nussle*, 534 U.S. 516, 532 (2002). For Wisconsin inmates, this means filing an internal grievance and completing all the levels of review available through the Inmate Complaint Review System (ICRS), set forth at Wis. Admin. Code §§ DOC 310.01-310.18. Defendants have the burden of pleading and proving lack of exhaustion. *Dole v. Chandler*, 438 F.3d 804, 809 (7<sup>th</sup> Cir. 2006).

The undisputed facts before the court show that plaintiff did not utilize the ICRS to present his claims before filing the instant lawsuit. Accordingly, the motion for summary judgment must be granted. *See, e.g., Dixon v. Page*, 291 F.3d 485, 488 (7<sup>th</sup> Cir. 2002) (district courts lack discretion to decide claims on merits unless exhaustion requirement has been satisfied).

#### ORDER

IT IS ORDERED that defendants' motion for summary judgment for plaintiff's failure to exhaust his administrative remedies is GRANTED and the complaint is DISMISSED WITHOUT PREJUDICE.

Entered this 11<sup>th</sup> day of October, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge