

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

RICHARD WINTERS, JOE CORONADO,
RONNIE NICHOLSON, PETER YOGERST,
WILLIAM PAYNE, COREY WISEMAN,
NATHANIAL DUKES, AL CURTIS,
EDWARD WILSON, RONALD McCAIN,
PAUL PRICE, DANNY DAVIS,
STANLEY FELTON, BRIAN CLARK,
RUFUS LYNCH, DANNY WEBB,
JAMES JACKSON, ROY BOATNER,
JESSIE THOMAS, JIMMY McQUEEN,
KEVIN VANCE, DEMITRIUS ROBERTSON,
THOMAS JONES and ANTWAN TOWNSEND,
Plaintiffs,

ORDER
00-C-318-C

v.

CHARLES BLANCHETT, PERCY PITZER,
OFFICER JOHN DOE #1, OFFICER JOHN DOE #2
and OFFICER JOHN DOE #3,
Defendants.

This is a civil action for monetary, declaratory and injunctive relief brought pursuant to 42 U.S.C. § 1983. Plaintiffs are presently confined at the Supermaximum Correctional Institution in Boscobel, Wisconsin but were confined at the Corrections Corporation of America-Whiteville Correctional Facility in Tennessee at all times relevant to the complaint.

In an order entered on June 12, 2000, I allowed plaintiffs to proceed on their claim of excessive force against defendants John Doe #1, John Doe #2 and John Doe #3; failure to protect from harm against defendants Jon E. Litscher, Charles Blanchett, Steven Schneider, Stephen Puckett and Percy Pitzer; and conditions of confinement against defendant Pitzer. I dismissed all other claims for failure to state a claim upon which relief may be granted. In an order entered on July 25, 2000, I dismissed defendants Litscher, Schneider and Puckett from this case on my own motion because of plaintiffs' failure to exhaust their administrative remedies against these defendants. In that order, I stayed a decision whether to allow plaintiffs to proceed on their claims against defendants Blanchett, Pitzer, John Doe #1, John Doe #2 and John Doe #3 until August 7, 2000, in order to allow plaintiffs additional time to submit proof that they had exhausted their administrative remedies against these defendants before filing their proposed complaint or provide an explanation for their failure to do so.

Presently before the court are (1) the motion of plaintiffs Richard Winters and Ronald McCain for reconsideration of the dismissal of defendants Litscher, Schneider and Puckett; (2) plaintiffs' motion for an extension of time to submit proof of exhaustion; and (3) plaintiffs' proof of exhaustion of administrative remedies in response to the order entered on July 25.

I. MOTIONS FOR RECONSIDERATION

Plaintiffs Richard Winters and Ronald McCain have written letters, that I construe as motions for reconsideration of the dismissal of defendants Litscher, Schneider and Puckett. Plaintiffs contend that the inmate complaint system at the Supermaximum Correctional Institution refused to address their complaints regarding the incidents that took place in Tennessee. Plaintiffs have failed to provide any evidence that they filed a complaint under the inmate complaint system at Supermaximum Correctional Institution in which they complained that defendants Litscher, Schneider and Puckett (all employees of the Wisconsin Department of Corrections) failed to protect them from harm. Wis. Admin. Code § DOC 310.04 requires that “[b]efore an inmate may commence a civil action . . . , the inmate shall file a complaint under §§ DOC 310.09 or 310.10, receive a decision on the complaint under § DOC 310.12, have an adverse decision reviewed under § DOC 310.13, and be advised of the secretary's decision under § DOC 310.14.” Because plaintiffs have not filed the appropriate complaints, it was not an error to dismiss defendants Litscher, Schneider and Puckett from this case. Plaintiffs' motions for reconsideration will be denied.

II. MOTION FOR EXTENSION OF TIME

Plaintiffs have moved for an extension of time until September 7, 2000, to file proof of administrative exhaustion against defendants Blanchett, Pitzer, John Doe #1, John Doe #2

and John Doe #3 for a variety of reasons. With the exception of plaintiffs McQueen and Robertson, all of the plaintiffs have submitted some proof of exhaustion of administrative grievances, either with the initial complaint or in response to the July 24 order. I will consider all submissions I have received from plaintiffs to date; however, I will deny plaintiffs' motion to extend the time for submission of administrative materials beyond today because I find that plaintiffs have had adequate opportunity to submit proof of exhaustion.

III. PROOF OF ADMINISTRATIVE EXHAUSTION

Plaintiffs filed the following proof of administrative exhaustion with their complaint and in response to my order of July 25:

Supermaximum Correctional Institution

Plaintiff	Plaintiff submitted a copy of inmate grievance in which he complained of procedural due process violations or a copy of a request for review of a program review action.	Plaintiff submitted responses from the state of Wisconsin to his inmate complaint regarding discipline, transfer, classification or procedural due process violations.	Plaintiff submitted a copy of a letter from the state of Wisconsin, instructing him to direct any complaints about CCA to Warden Pitzer.	Plaintiff submitted a memorandum from a deputy warden at Supermax, stating that CCA decisions must be appealed to CCA.	Plaintiff submitted memorandum from a deputy warden at Supermax, stating that CCA would not give its inmates letters from inmates at Supermax.
Winters	X	X	X		
Coronado	X	X			
Nicholson	X	X	X	X	X
Yogerst	X	X	X		X
Payne	X				
Wiseman	X		X	X	
Dukes	X	X	X		
Curtis	X	X	X		
Wilson	X				
McCain		X			
Price	X	X	X		
Davis	X	X	X		
Felton			X		
Clark	X		X	X	
Lynch		X	X		
Webb		X	X		
Jackson	X		X		
Thomas	X	X	X		
Vance	X		X		
Jones	X	X			
Townshend	X	X	X		

CCA-Whiteville

Plaintiff	Plaintiff argues that he could not file a complaint while at CCA because he lacked the necessary materials between the time of the riot and his transfer.	Plaintiff submitted a copy of an appeal to CCA regarding his conduct report or disciplinary hearing.
Winters	X	X
Coronado	X	X
Nicholson	X	X
Yogerst	X	X
Payne	X	X
Wiseman	X	
Dukes	X	X
Curtis	X	X
Wilson	X	
McCain	X	
Price	X	X
Davis	X	X
Felton	X	
Clark	X	X
Lynch	X	X
Webb	X	X
Jackson	X	
Boatner	X	
Thomas	X	
McQueen		
Vance	X	X
Robertson	X	

Plaintiff	Plaintiff argues that he could not file a complaint while at CCA because he lacked the necessary materials between the time of the riot and his transfer.	Plaintiff submitted a copy of an appeal to CCA regarding his conduct report or disciplinary hearing.
Jones	X	X
Townshend	X	X

Plaintiffs contend that the state of Wisconsin's inmate grievance system was not available to them to file complaints regarding actions taken by employees of CCA-Whiteville. Plaintiffs have submitted sufficient proof to support this contention. In addition, some of the plaintiffs contend that CCA-Whiteville's grievance system was not available to them because they were unable to obtain inmate grievance forms from CCA-Whiteville. Without documentary evidence that plaintiffs requested inmate grievance forms from the appropriate officials at CCA-Whiteville, I cannot say that plaintiffs have exhausted all available administrative remedies. I will give plaintiffs two weeks to submit proof that they attempted to obtain the appropriate forms through official avenues, rather than through inmates at CCA-Whiteville or family members. If plaintiffs are unable to submit such proof, I will dismiss their complaint for their failure to exhaust available administrative remedies on their Eighth Amendment claims.

ORDER

IT IS ORDERED that

1. The motion of plaintiffs Richard Winters and Ronald McCain for reconsideration is DENIED;

2. Plaintiffs' motion for an extension of time in which to file proof of administrative exhaustion is DENIED;

3. A decision whether plaintiffs may proceed on their claims against defendants Charles Blanchett, Percy Pitzer, John Doe #1, John Doe #2 and John Doe #3 is STAYED until September 6, 2000 in order for plaintiffs to submit proof that they attempted to obtain inmate grievance forms from the Corrections Corporation of America-Whiteville Correctional Facility in Tennessee.

Entered this 24th day of August, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge