

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

JONATHON M. MARK,

Plaintiff,

v.

OFFICERS OLSON; HAGLIN; SGT. MESHUN;
SGT. McAURTHUR; MRS. TEGELS;
MR. DOUGHERTY; LT. BENGAL; LT. DOHMS;
LT. JOHNSON; and MEDICAL STAFF
STAFF BETWEEN 7-15-02 TO 9-15-02 (JOHN
AND JANE DOES),

Defendants.

MEMORANDUM

03-C-516-C

Plaintiff has written to advise the court that he will be released from jail on January 6, 2004. He states that because of the short time he has left in jail, he will be unable to exhaust all of the issues he raised in this lawsuit. He asks whether he will be allowed to continue to exhaust his administrative remedies from outside his confinement or whether he should sacrifice his freedom in order to “save” his civil suit.

As an initial matter, I note that plaintiff does not indicate that he served a copy of his communication to the court on counsel for the defendants, as he is required to do. Fed. R. Civ. P. 5. In this one instance, I am sending defendants’ counsel a copy of plaintiff’s letter

with a copy of this order. In the future, however, this court will not consider any document plaintiff files that does not clearly show that a copy has been served on counsel for the defendants.

With respect to plaintiff's question whether he should remain incarcerated beyond his January 6 release date in order to complete the exhaustion process for each of the claims raised in this lawsuit, the answer is "no." In the first place, it is doubtful that plaintiff has the ability to dictate his release date. Even if he could convince jail officials to keep him beyond his release date, it will not help him avoid dismissal of any claim he failed to exhaust before filing his lawsuit, should defendants move for dismissal on that ground. The Court of Appeals for the Seventh Circuit has held that "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." Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 535 (7th Cir. 1999); see also Massey v. Helman, 196 F.3d 727, 733 (7th Cir. 1999).

Plaintiff is advised that it is his responsibility to advise the court and defense counsel of his new address promptly after his release. If plaintiff fails to keep the court and counsel

for defendants apprised of his whereabouts, this lawsuit may be subject to dismissal for plaintiff's failure to prosecute it.

Entered this 29th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge