

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

ROBERT DARWYN WHEELER,

Plaintiff,

ORDER

03-C-576-C

v.

RON KOLLMAN,

Defendant.

Plaintiff is proceeding pro se and in forma pauperis in this case on his claim that defendant Kollman used excessive force when he struck plaintiff in the mid-section. On December 18, 2003, defendnt Kollman moved to dismiss the complaint on the ground that plaintiff had failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997e(a). A schedule for briefing the motion was established by the court that gave plaintiff until January 13, 2003, in which to oppose the motion. Now plaintiff has moved for enlargement of the January 13 deadline. He argues that he needs more time to oppose defendant's motion because he is in a minimum security prison where he does not have "constant access" to a law library. He states that in order to do his legal research, he will have to obtain permission to "get into the medium prison" and then request copies (of what

he does not say) by mail.

The decision whether this case must be dismissed for plaintiff's failure to exhaust his administrative remedies is not one that will turn on plaintiff's ability to cite to legal authority. If, as defendant says, plaintiff's inmate complaint about defendant Kollman's conduct was dismissed as having been filed outside the 14 day period allowed under the prison's grievance procedures, his lawsuit will be subject to dismissal. Plaintiff will be able to save his suit from dismissal only if he puts in evidence to show that he filed an inmate complaint different from the one defendant has put into evidence that was appealed *on its merits* through the required levels to the Secretary of the Department of Corrections. Such evidence, if it exists, should already be in plaintiff's possession. It will not be found in a book in the library.

Accordingly, IT IS ORDERED that plaintiff's motion for an enlargement of time in which to oppose defendant's motion to dismiss is DENIED.

Entered this 8th day of January, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge