

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

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DAVID J. CLARK, #215034,

Plaintiff,

v.

SERGEANT SPITTLE,  
JOHN DOE SECURITY SUPERVISOR/WARDEN,

Defendants.  
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ORDER

04-C-119-C

In an order dated April 6, 2004, I determined that this case may be subject to prompt dismissal under 42 U.S.C. § 1997e. Because plaintiff's own allegations revealed that his administrative appeal of the claim raised in this lawsuit was dismissed as untimely, even though he had explained the delay requested permission to file a late appeal. However, I gave plaintiff until April 29, 2004, in which to advise the court whether it had misunderstood or misconstrued his allegations. Now plaintiff has responded to the April 6 order.

In his response, plaintiff admits that his appeal to the Corrections Complaint Examiner was dismissed as untimely. He asks that this court either consider that he has complied with § 1997e's exhaustion requirement or make an exception to it. He explains,

as presumably he did to the Corrections Complaint Examiner, that his failure to meet the filing deadline was inadvertent error and not purposeful. Alternatively, he suggests that because the inmate complaint examiner missed by seven days the deadline set out in the administrative procedure for filing a response to his inmate complaint, fairness dictates that this court direct the Corrections Complaint Examiner to allow plaintiff's late appeal.

As I previously explained to petitioner, a prisoner must observe the procedural requirements of the system in order to satisfy § 1997e's exhaustion requirement. Pozo v. McCaughtry, 286 F.3d 1022, 1023 (7th Cir. 2002). “[A] prisoner who does not properly take each step within the administrative process has failed to exhaust state remedies, and thus is foreclosed by § 1997e(a) from litigating. Failure to do what the state requires bars, and does not just postpone, suit under § 1983.” Id. at 1024.

Although plaintiff has advanced an understandable explanation for his lateness in filing his appeal with the Corrections Complaint Examiner, it is not this court's role to override the Corrections Complaint Examiner's decision to refrain from finding good cause for the delay and allowing a late appeal pursuant to Wis. Admin. Code § DOC 310.13(2). That discretion rests solely within the authority of the Corrections Complaint Examiner.

Furthermore, this court is bound by governing law to dismiss plaintiff's complaint.

Nothing in that law permits a district court to fashion exceptions to the rules of administrative exhaustion when an inmate receives a response to his inmate complaint outside the time limits set by the administrative code.

ORDER

IT IS ORDERED that this case is DISMISSED for plaintiff's failure to exhaust his administrative remedies. The clerk of court is directed to enter judgment of dismissal and close this case.

Entered this 30th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge