

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

DONALD BUFORD,

Plaintiff,

v.

JIM SUTTEN, TIM DOUMA and
PAT SIEDSCHLAG,

Defendants.

ORDER

04-C-959-C

This is a civil action for injunctive and monetary relief, brought under 42 U.S.C. § 1983. Plaintiff Donald Buford is an inmate at Columbia Correctional Institution in Portage, Wisconsin. Defendants Jim Suttén and Tim Douma are employees of Columbia Correctional Institution, and defendant Pat Siedschlag is retired from employment at Columbia Correctional Institution. Plaintiff is proceeding in forma pauperis and pro se in this action on his claims that 1) defendant Jim Suttén violated his rights under the equal protection clause of the Fourteenth Amendment by placing him in a cell with a violent inmate after removing a white inmate from the cell; 2) defendant Suttén violated his Eighth Amendment rights by failing to protect plaintiff from being assaulted by that inmate; 3)

defendant Tim Douma violated his Eighth Amendment rights by denying plaintiff exercise while he was in segregated confinement; and 3) defendant Pat Siedschlag violated his Eighth Amendment rights by withholding treatment for plaintiff's genital warts. This case is currently before the court on defendants' motion to dismiss for plaintiff's failure to exhaust his administrative remedies.

The exhaustion provision of the Prison Litigation Reform Act state that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). 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). Moreover, the court has stated that "if a prison has an internal administrative grievance system through which a prisoner can seek to correct a problem, then the prisoner must utilize that administrative system before filing a claim. The potential effectiveness of an administrative response bears no relationship to the statutory requirement that prisoners first attempt to obtain relief through administrative procedures." Massey v. Helman, 196 F.3d 727, 733 (7th Cir. 1999).

Before filing a civil action, Wisconsin inmates must file a complaint with the inmate

complaint examiner under §§ DOC 310.09 or 310.10, receive a decision on the complaint from the appropriate reviewing authority under § DOC 310.12, have an adverse decision reviewed by the corrections complaint examiner under § DOC 310.13 and be advised of the secretary's decision under § DOC 310.14. Wis. Admin. Code § DOC 310.07.

In support of their motion, defendants have submitted an affidavit from Sandra Hautamaki, who is employed as a corrections complaint examiner by the Wisconsin Department of Corrections. In her affidavit, Hautamaki avers that she performed a thorough examination of the regularly conducted business records of her office with respect to inmate complaint appeals filed by plaintiff and found that plaintiff has not filed any inmate complaint appeals concerning any of the four issues on which he was granted leave to proceed. Plaintiff has opposed defendants' motion by submitting a letter, dkt. #17, to which he has attached various inmate complaints he filed. In addition, plaintiff submitted numerous inmate complaints and other documents with his original complaint in this case. I can consider these documents without converting the motion to dismiss into a motion for summary judgment because documentation of a prisoner's use of the inmate complaint review system is a matter of public record. General Electric Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1080-81 (7th Cir. 1997).

I have reviewed the materials submitted in response to the motion to dismiss as well as the documents attached to plaintiff's original complaint. Those documents indicate that

plaintiff did file an inmate complaint about not receiving medical treatment for his genital warts during his time in segregated confinement. However, plaintiff has not shown that he appealed any adverse decision with respect to this claim. “To exhaust remedies, a prisoner must file complaints and appeals in the place, and at the time, the prison’s administrative rules require.” Pozo v. McCaughtry, 286 F.3d 1022, 1025 (7th Cir. 2002). The Wisconsin Administrative Code makes an appeal of a dismissed complaint to the corrections complaint examiner a requirement of the exhaustion process. Wis. Admin. Code §§ DOC 310.04, 310.13. When plaintiff failed to appeal the dismissal of his inmate complaint regarding the lack of medical treatment he received for his genital warts, he failed to exhaust his administrative remedies on this claim. Id. (exhaustion not accomplished because plaintiff failed to file timely appeal). Moreover, plaintiff has not refuted defendants’ contention that he failed to file any inmate complaints or appeals about being placed in a cell with inmate Jackson or being denied exercise while in segregated confinement. Hautamaki’s affidavit establishes that even if plaintiff did not file a complaint raising these matters, he did not appeal any adverse decisions relating to these claims.

In the letter plaintiff submitted in opposition to the motion to dismiss, plaintiff contends that prison officials are withholding or delaying his incoming and outgoing mail. I have already denied plaintiff leave to proceed on this allegation and in the context of the motion to dismiss, he does not contend that any interference with his mail has prevented

him from exhausting his administrative remedies. Therefore, I conclude that plaintiff has failed to exhaust his administrative remedies. Plaintiff's case will be dismissed without prejudice to his re-filing his claims after he has exhausted his administrative remedies.

ORDER

IT IS ORDERED that the motion to dismiss filed by defendants Jim Suttan, Tim Douma and Pat Siedschlag is GRANTED. This case is DISMISSED without prejudice to plaintiff's re-filing his claims after he has exhausted his administrative remedies. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 24th day of June, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge