

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

LARRY STOCKS,

Petitioner,

v.

JOSEPH SCIBANA,

Respondent.

ORDER

05-C-136-C

Petitioner Larry Stocks, an inmate at the Federal Correctional Institution in Oxford, Wisconsin, brought this petition for a writ of habeas corpus claiming that he is in custody in violation of the laws or Constitution of the United States. 28 U.S.C. § 2241. Specifically, petitioner claims that his due process rights were violated when his parole was revoked by an African-American hearing officer who considered the racial slurs he made during a revocation interview and who decided to revoke petitioner's parole before the hearing. In an order dated April 5, 2005, I dismissed petitioner's claim about the hearing officer's consideration of his racial slurs because it did not suggest a violation of petitioner's constitutional rights. However, I stayed a decision as to his claim that the hearing officer had predetermined that revocation was in order because it was not clear from the petitioner's

submissions that he had exhausted his administrative remedies as to that claim.

I gave petitioner until April 22, 2005 in which to submit a copy of the appeal he filed with the National Appeals Board. As I stated in the April 5 order, “if petitioner did not make clear in his appeal that he believed the outcome of his hearing had been predetermined, then this claim will have to be dismissed for his failure to exhaust it.” Order, dkt. # 3, at 6. Petitioner has now submitted a copy of his appeal, which shows that he complained as follows:

My Right of due Process of equal protection of the laws, clause which is in Violation of the United States Constitutions, 5th Amendment. That said Larry Stocks could not and did not get a fair hearing. By the Board Member at the Hearing in the Oklahoma Transfer Center. Because of what was said by Michael A Brogla the Interviewing officer. For said Violations. That said Larry Stocks has a hearing by a African-American Person. This show that Larry Stocks, due Process under the 5th Amendment was Viola[t]ed , an facts that he could not get a fair hearing.

Nothing in this complaint gives notice of petitioner’s claim that his parole revocation hearing officer had decided to revoke petitioner’s parole prior to the hearing, depriving petitioner of a meaningful hearing. The purpose of the exhaustion requirement is to allow the pertinent agency an opportunity to correct its own mistakes and complete its decision-making procedures before judicial intervention. Petitioner’s appeal does not provide that opportunity. Thus, I conclude that he has failed to exhaust administrative remedies as to his predetermination claim. Del Raine v. Carlson, 826 F.2d 698, 703 (7th Cir. 1987) (federal prisoner seeking federal habeas corpus “is required to exhaust his federal

administrative remedies, which is to say his remedies within the prison system”); Sanchez v. Miller, 792 F.2d 694, 697 (7th Cir. 1986) (same).

Although district courts have discretion to excuse petitioners from using the administrative complaint process when “(1) requiring exhaustion of administrative remedies causes prejudice, due to unreasonable delay or an indefinite timeframe for administrative action; (2) the agency lacks the ability or competence to resolve the issue or grant the relief requested; (3) appealing through the administrative process would be futile because the agency is biased or has predetermined the issue; or (4) where substantial constitutional questions are raised.” Gonzalez v. O’Connell, 355 F.3d 1010, 1016 (7th Cir. 2004) (citing Iddir v. INS, 301 F.3d 492, 498 (7th Cir.2002)), none of these circumstances are present here. Accordingly, the petition will be dismissed.

IT IS ORDERED that petitioner Larry Stock’s petition for a writ of habeas corpus is DISMISSED.

Entered this 25th day of April, 2005.

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