

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

ERIC PRINCE HOLTON,
Plaintiff,

v.

MEMORANDUM and ORDER
06-C-190-S

CAPTAIN SCHOLKE, T.H. WILLIAMS
and DR. HEINZL,

Defendants.

On May 5, 2006 plaintiff Eric Prince Holton was allowed to proceed on his Eighth Amendment claims against defendant Captain Scholke, T.H. Williams and Dr. Heinzl. In his complaint he alleges that while he was incarcerated in the Dodge Correctional Institution, the Sheboygan County Jail and the New Lisbon Correctional Institution he was denied medical and dental treatment by the defendants.

On May 16, 2006 defendants Williams and Heinzl moved to dismiss plaintiff's complaint for failure to exhaust his administrative remedies prior to commencing this action. Plaintiff's response to this motion was to be filed not later than June 5, 2006 and has not been filed to date.

FACTS

While he was incarcerated at the Dodge Correctional Institution and New Lisbon Correctional Institution he filed inmate

complaints concerning lack of medical treatment but never appealed any of the adverse decision through the Inmate Complaint Review System.

MEMORANDUM

Pursuant to 42 U.S.C. § 1997e(a), no action shall be brought with respect to prison conditions by a prisoner confined in any jail, prison or other correctional facility until available administrative remedies are exhausted. Prisoners must file their 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)

In Perez v. Wisconsin Department of Corrections, 182 F.3d 532, 535 (7th Cir. 1999), the Court held as follows:

...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, even if the prisoner exhausts intra-prison remedies before judgment.

Plaintiff may have attempted to exhaust his administrative remedies but he failed to do so. Further, he did not follow the rules for filing appeals of his inmate complaints. Perez requires dismissal of plaintiff's suit against defendants Williams and Heinzl because he did not exhaust his administrative remedies prior to commencing this action. Accordingly, plaintiff's complaint against defendants Williams and Heinzl must be dismissed for his failure to exhaust his administrative remedies.

Plaintiff's claim against defendant Captain Scholke concerning the denial of medical treatment at the Sheboygan County Jail remains. There is no proof of service of Captain Scholke in the file but on May 5, 2006 the United States Marshal was directed to serve him. The United States Marshal is directed to advise this Court not later than June 16, 2006 whether defendant Scholke has been served.

ORDER

IT IS ORDERED that the motion of defendants Williams and Heinzl to dismiss plaintiff's complaint for failure to exhaust his administrative remedies is GRANTED.

Entered this 12th day of June, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge