

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 June 12, 2006 the motion of defendants Williams and Heinzl to dismiss plaintiff's complaint for failure to exhaust his administrative remedies prior to commencing this action was granted.

Defendant Scholke now moves to dismiss plaintiff's complaint for the same reason. No response is necessary because it is the same motion which has already been previously decided.

FACTS

While plaintiff was in the custody of the Wisconsin Department of Corrections he was temporarily housed at the Sheboygan County Detention Center. Defendant John Scholke was a captain at the center. Plaintiff did not exhaust his administrative remedies concerning any claim against defendant Scholke.

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 defendant Scholke because he did not exhaust his administrative remedies prior to commencing

this action. Accordingly, plaintiff's complaint against defendant Scholke must be dismissed for his failure to exhaust his administrative remedies. Judgment will be entered in favor of all defendants without prejudice.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that the motion of defendant Scholke to dismiss plaintiff's complaint for failure to exhaust his administrative remedies is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein without prejudice for failure to exhaust his administrative remedies.

Entered this 21st day of June, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge