

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

ANDRE WINGO,

Plaintiff,

v.

MEMORANDUM AND ORDER
06-C-440-S

CAPTAIN HESKE, SGT. CURLER and
CO II BLASK,

Defendants.

Plaintiff Andre Wingo was allowed to proceed on his Eighth Amendment claim against defendants Captain Heske, Sgt. Curler and CO II Blask. He alleges that the defendants subjected him to excessive force.

On November 6, 2006 defendants moved to dismiss plaintiff's complaint for failure to exhaust administrative remedies. This motion has been fully briefed and is ready for decision.

FACTS

On January 24, 2003 while he was incarcerated at the Milwaukee Secure Detention Facility plaintiff submitted an inmate grievance #03-3150 alleging that he was severely beaten. On February 4, 2003 Inmate Complaint examiner dismissed his complaint because it was too vague. Because the complaint was rejected plaintiff had ten calendars day to appeal to the appropriate reviewing authority which was the warden of the Milwaukee Secure Detention Facility.

In his affidavit plaintiff asserts that on January 25, 2003 he submitted a request for review of his rejected complaint. He does not submit a copy of this request.

MEMORANDUM

Defendants move to dismiss plaintiff's complaint for failure to exhaust his administrative remedies. 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.

According to the record plaintiff did not submit a request for review of the February 4, 2003 rejection of his complaint. Accordingly, he has not properly exhausted his administrative remedies.

Accordingly, Perez requires dismissal of plaintiff's complaint because he did not exhaust his administrative remedies prior to commencing this action.

ORDER

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

IT IS FURTHER ORDERED that judgment be entered in favor of defendant against plaintiff DISMISSING his complaint without prejudice for his failure to exhaust his administrative remedies.

Entered this 17th day of November, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge