

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

ALGEN M. LAMON,

Plaintiff,

v.

MEMORANDUM and ORDER

PAUL H. BELOUNGY
and JOHN FAHRNEY,

06-C-601-S

Defendants.

Plaintiff Algen M. Lamon was allowed to proceed on his Eighth Amendment excessive force claim against defendant Paul H. Beloungy. He was also allowed to proceed on his Fourth Amendment claim against defendant Fahrney.

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

FACTS

Plaintiff filed an inmate complaint concerning the use of excessive force by defendant Beloungy. Plaintiff never filed an appeal of the denial of his inmate complaint.

MEMORANDUM

Defendant moves 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 file an appeal of the denial of his inmate complaint pursuant to the administrative rules. Accordingly, Perez requires dismissal of plaintiff's complaint against defendant Beloungy because he did not exhaust his administrative remedies prior to commencing this action.

The above entitled action remains pending against defendant Fahrney.

ORDER

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

Entered this 28th day of November, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge