

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

ERIC WISE,

Plaintiff,

v.

MEMORANDUM AND ORDER
07-C-20-S

TIMOTHY LUNDQUIST, STEPHANIE
FLINT and MILDRED PARISE,

Defendants.

Plaintiff Eric Wise was allowed to proceed on his claim that he was denied access to the Courts by defendants Timothy Lundquist, Stephanie Flint and Mildred Parise. In his complaint he alleges that the defendants were/are denying him reasonable access to the law library which is causing him prejudice in a pending criminal case.

On March 2, 2007 defendants moved to dismiss plaintiff's complaint for failure to exhaust administrative remedies. This motion is fully briefed and is ready for decision.

FACTS

Plaintiff is incarcerated at the New Lisbon Correctional Institution, New Lisbon, Wisconsin (NLCI). Defendants Timothy Lundquist, Stephanie Flint and Mildred Parise were employed at NLCI.

On November 10, 2006 plaintiff filed inmate complaint NLCI-2006-33302 complaining that he was denied extra law library time. The institution complaint examiner recommended that his complaint be dismissed after determining he had adequate time to research and complete his legal work for a June 25, 2007 court deadline. On December 14, 2006 Wise's complaint was dismissed by the appropriate reviewing authority.

Plaintiff did not appeal this complaint to the Corrections Complaint Examiner. He did not file any other complaint concerning the denial of his law library time.

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.

Plaintiff contends in his brief that he did not file his appeal because he requested the appeal form and did not receive it. He has provided no documentation of this allegation which could have included an inmate complaint alleging that he was not provided this form or a sworn affidavit that the form was unavailable to him. Plaintiff has not shown that the appeal form was unavailable to him.

The Court has reviewed the inmate complaints filed by plaintiff and concludes that he did not exhaust his administrative remedies on his claim that he was denied reasonable time in the law library. Accordingly, Perez requires dismissal of plaintiff's complaint because he did not exhaust his administrative remedies prior to commencing this action.

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 complaint must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

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

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

Entered this 26th day of March, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge