

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

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TERRANCE GRISSOM,

Plaintiff,

v.

MEMORANDUM AND ORDER  
07-C-232-S

DON STRAHOTA and SERGEANT  
HELBIRT,

Defendants.

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Plaintiff Terrance Grissom was allowed to proceed on his Eighth Amendment claim that defendants Don Strahota and Sergeant Helbirt assaulted him while he was incarcerated at the Waupun Correctional Institution.

On May 10, 2007 defendants moved to dismiss plaintiff's complaint for failure to exhaust administrative remedies. Pursuant to this Court's May 22, 2007 scheduling order plaintiff's brief in opposition to this motion was to be filed not later than May 30, 2007 and has not been filed to date.

FACTS

Plaintiff is currently incarcerated at the Columbia Correctional Institution, Portage, Wisconsin. Defendants Don Strahota and Sergeant Helbirt are employed at the Waupun Correctional Institution, Waupun, Wisconsin (WCI).

Plaintiff alleges that while he was incarcerated at WCI defendants assaulted him. He filed inmate complaint WCI-2007-10192 on April 5, 2007 regarding this incident. On April 13, 2007 the Inmate Complaint Examiner dismissed his complaint with modification. On April 18, 2007 the Reviewer Mike Thurmer affirmed the decision of the Inmate Complaint Examiner. Plaintiff did not appeal this decision to the Corrections Complaint Examiner.

#### 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 (7<sup>th</sup> Cir. 2002)

In Perez v. Wisconsin Department of Corrections, 182 F.3d 532, 535 (7<sup>th</sup> 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 did not appeal the reviewer's decision to the Corrections Complaint Examiner as required by Wis. Admin. Code

§DOC310.07(4), 310.13. 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 (7<sup>th</sup> Cir. 1997).

ORDER

IT IS ORDERED that defendants' 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 defendants against plaintiff DISMISSING his complaint without prejudice for his failure to exhaust his administrative remedies.

Entered this 5<sup>th</sup> day of June, 2007.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge