

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

ANTHONY PRATT,

Plaintiff,

v.

MEMORANDUM and ORDER
07-C-327-S

KURT REIM, MARION FEATHER,
STEVE ROBINSON, DAN WINGER
and PHIL URBANEK,

Defendants.

Plaintiff Anthony Pratt was allowed to proceed on his claim that he was denied due process by defendants Kurt Reim, Marion Feather, Steve Robinson, Dan Winger and Phil Urbanek when he was placed in administrative detention and removed from the Residential Drug Treatment Program.

On September 21, 2007 defendants moved to dismiss plaintiff's complaint because he failed to exhaust his administrative remedies prior to filing suit. This motion has been fully briefed and is ready for decision. Plaintiff's motion for judgment on the pleadings has been stayed.

FACTS

Plaintiff Anthony Pratt is currently confined at the United States Penitentiary, Marion, Illinois. At all times material to

this action he was confined at the Federal Correctional Institution, Oxford, Wisconsin (FCI-Oxford). Plaintiff was transferred to the Special Housing Unit (SHU) at FCI-Oxford and was removed from the Residential Drug Abuse Program (RDAP). He claims the defendants violated his due process rights.

Plaintiff has not exhausted his administrative remedies on his claims concerning his transfer to SHU or his removal from RDAP.

MEMORANDUM

Defendants move to dismiss plaintiff's complaint for failure to exhaust his administrative remedies. Plaintiff has not shown that he has exhausted 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.

The Court has reviewed the inmate complaints filed by plaintiff and concludes that he did not exhaust his administrative remedies on his claims prior to filing the present action. Accordingly, Perez requires dismissal of plaintiff's complaint. Ford v. Johnson, 362 F.3d 395 (7th Cir. 2004).

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

IT IS FURTHER ORDERED that plaintiff's judgment on the pleadings is DENIED as moot.

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 25th day of October, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge