IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHARLES NORWOOD,

ORDER

Petitioner,

07-C-446-C

v.

CAPT. RADTKE, C.O. GROAK and OTHERS,

Respondents.

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In an order dated August 22, 2007, I denied petitioner Charles Norwood's request for leave to proceed in forma pauperis in this action, because it was clear from the face of his complaint and the complaint's attachments that he had not exhausted his administrative remedies as required under the 1996 Prison Litigation Reform Act. Judgment of dismissal without prejudice to petitioner's refiling his complaint after he exhausts his administrative remedies was entered on August 23, 2007. Now petitioner has filed documents titled "Motion of Abeyance Argue Judge Order to Dismiss/Affirmative Defenses," "Motion to Reconsider and Addendum" and "Motion for Restraining or Granting Safety Measures," which I construe together as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59.

The purpose of a Rule 59 motion is to bring to the court's attention newly discovered evidence or a manifest error of law or fact. E.g., Bordelon v. Chicago School Reform Bd. of Trustees, 233 F.3d 524, 529 (7th Cir. 2000). It is not intended as an opportunity to reargue the merits of a case, Neal v. Newspaper Holdings, Inc. 349 F.3d 363, 368 (7th Cir. 2003), or as an opportunity for a party to start giving evidence that could have been presented earlier. Dal Pozzo v. Basic Machinery Co., Inc., No. 04-4277 (7th Cir. Sept. 6, 2006) (citing Frietsch v. Refco, Inc., 56 F.3d 825, 828 (7th Cir. 1995)). Motions under Rule 59 must be filed within ten days of the entry of judgment. Fed. R. Civ. P. 59(b). A litigant's failure to meet the time limits of Rule 59 forecloses him from raising in the district court his assertions that errors of law have been made. United States v. Griffin, 782 F.2d 1393 (7th Cir. 1986). If the motion is timely, the movant must "clearly establish" his or her grounds for relief. Romo v. Gulf Stream Coach, Inc., 250 F.3d 1119, 1122 n.3 (7th Cir. 2001). A timely motion filed pursuant to Fed. R. Civ. P. 59 tolls the time for taking an appeal.

Plaintiff's motion is timely. It was received by the court on August 31, 2007. However, nothing in petitioner's motion convinces me that I made errors of law in dismissing his action. In support of his motion, petitioner argues that the inmate complaint examiner who rejected his inmate complaint because it contained more than one issue could have just as easily waived the one issue requirement "for good cause." He appears to believe that this court has authority to exercise discretion in place of the examiner, accept his

rejected complaint, and find that the complaint, without more, is adequate to exhaust his administrative remedies under 28 U.S.C. § 1997e. Petitioner is mistaken.

As I explained to petitioner in the August 22 opinion and order, "if a prison has an internal administrative grievance system through which a prisoner can seek to correct a problem, then the prisoner must utilize that administrative system before filing a claim [in federal court]." Massey v. Helman, 196 F.3d 727, 733 (7th Cir. 1999). Exhaustion has not occurred unless an inmate follows the rules that the state has established governing the administrative process. Dixon v. Page, 291 F.3d 485, 488 (7th Cir. 2002); Pozo v. McCaughtry, 286 F.3d 1022, 1025 (7th Cir. 2002). An inmate must "properly take each step within the administrative process" or else he is foreclosed by 42 U.S.C. § 1997e from bringing suit with respect to each unexhausted claim. Pozo, 286 F.3d at 1024.

Wisconsin inmates have access to an administrative grievance system governed by the procedures set out in Wis. Admin. Code §§ DOC 310.01-310.18. Under these provisions, prisoners start the complaint process by filing an inmate complaint with the institution complaint examiner. An institution complaint examiner may investigate inmate complaints, reject them for failure to meet filing requirements or recommend to the appropriate reviewing authority that they be granted or dismissed. Wis. Admin. Code § DOC 310.07(2). However, if the institution complaint examiner makes a recommendation that the complaint be granted or dismissed on its merits, the appropriate reviewing authority may dismiss,

affirm or return the complaint for further investigation. Wis. Admin. Code § DOC 310.12. If an inmate disagrees with the decision of the reviewing authority, he may appeal to a corrections complaint examiner, who is required to conduct additional investigation where appropriate and make a recommendation to the secretary of the Wisconsin Department of Corrections. Wis. Admin. Code § DOC 310.13. Within ten working days following receipt of the corrections complaint examiner's recommendation, the secretary must accept the recommendation in whole or with modifications, reject it and make a new decision or return it for further investigation. Wis. Admin. Code § DOC 310.14.

Under some circumstances, such as the circumstance presented in this case, an inmate complaint may be rejected before it is passed along to a reviewing authority. These include instances in which the complaint contains more than one issue. Wis. Admin. Code § DOC 310.09(1)(e). When an inmate's complaint is rejected, the prisoner may appeal the rejection to the appropriate reviewing authority (usually the warden), who may review only "the basis for the rejection of the complaint." Wis. Admin. Code § DOC 310.11(6).

In this case, if petitioner had appealed the rejection of his complaint to the warden and the warden had agreed that the rejection was inappropriate, his complaint would have been returned to the institution complaint examiner for review on the merits. At that point, petitioner would have been required to appeal any unfavorable decisions using the procedures described in Wis. Admin. Code § 310 before this court could have found that he

exhausted his administrative remedies. If the warden agreed that the complaint was properly rejected, then petitioner would have been required to start from scratch, rewriting his complaint to raise one issue only, submitting it to an institution complaint examiner, and appealing any adverse decisions as required by the procedures . Instead of taking this path or bypassing an appeal of the rejection and promptly refiling his complaint with one issue, petitioner filed his complaint in this court just two days after the rejection. He did not follow the requirements for submitting a complaint or any of the procedures the state has established for reviewing the decisions of an institution complaint examiner. In concluding that petitioner did not exhaust the administrative remedies that were available to him, this court was guided by legal precedent and the language of § 1997e. It did not err in applying the law. If petitioner believes he was entitled to an exemption from the "one-issue" rule the state's procedures demand, his recourse was to take the matter up with the appropriate reviewing authority. This court is not the appropriate reviewing authority.

ORDER

IT IS ORDERED that petitioner's motion brought pursuant to Fed. R. Civ. P. 59

to alter or amend the judgment entered herein on August 23, 2007 is DENIED.

Entered this 4th day of September, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge