

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

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LEIGHTON D. LINDSEY,

Plaintiff,

v.

ORDER

10-cv-385-bbc

DYLON RADTKE, Captain SALTZER,
RYAN ARMSON and JOSEPH CHICANOWICZ,

Defendants.

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In this civil action for monetary relief brought pursuant to 42 U.S.C. § 1983, plaintiff Leighton Lindsey is proceeding on claims that defendants Captain Saltzer, Ryan Armson and Joseph Chicanowicz used excessive force on him and defendant Dylan Radtke failed to provide him adequate medical treatment in violation of the Eighth Amendment. Now before the court is defendants' motion for summary judgment in which they contend that plaintiff's claim against defendant Radtke should be dismissed for plaintiff's failure to exhaust his administrative remedies, dkt. #32. Plaintiff does not oppose the motion, conceding that he did not exhaust his administrative remedies with respect to his claim against Radtke, dkt. #38. Plaintiff asks that Radtke be dismissed from the lawsuit.

Because defendant's motion is unopposed and plaintiff is required by 42 U.S.C. §

1997e(a) to exhaust all available administrative remedies before filing a lawsuit under § 1983 in federal court, I will grant defendants' motion. Burrell v. Powers, 431 F.3d 282, 284-85 (7th Cir. 2005); Perez v. Wisconsin Department of Corrections, 182 F.3d 532, 537 (7th Cir. 1999) (“[A] case filed before exhaustion has been accomplished must be dismissed.”) Therefore, plaintiff's claim that defendant Radtke failed to provide him adequate medical treatment in violation of the Eighth Amendment will be dismissed without prejudice. Ford v. Johnson, 362 F.3d 395, 401 (7th Cir. 2004) (dismissal for failure to exhaust is always without prejudice).

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendant Dylan Radtke, dkt. #32, is GRANTED. Plaintiff Leighton Lindsey's claim that Radtke violated his Eighth Amendment rights by failing to provide him adequate medical treatment is DISMISSED without prejudice for plaintiff's failure to exhaust his available administrative remedies before filing his lawsuit.

Entered this 26th day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge