

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

QUEINTON MATTHEWS, JR.,

OPINION AND ORDER

Plaintiff,

v.

12-cv-247-slc

ANDREW NETZ,

Defendant.

This is a prisoner civil rights action for monetary damages and injunctive relief brought pursuant to 42 U.S.C. § 1983. Plaintiff Queinton Matthews, Jr., has been granted leave to proceed on his claim that while he was incarcerated at the Wood County jail, defendant Andrew Netz, a lieutenant, placed him in administrative confinement and restricted his privileges because he exercised his rights under the First Amendment. Specifically, Matthews complains that Netz deprived him of the following privileges: (1) access to the law library; (2) the name of the sheriff; (3) access to his lawyer; (4) visitors; and (5) GED classes.

Netz has filed a motion for summary judgment on the ground that Matthews failed to exhaust his administrative remedies before filing suit, as required by the Prison Litigation Reform Act. 42 U.S.C. § 1997e(a) ("No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.").

In support of the motion, Netz has produced what appears to be plaintiff's entire jail file, which includes numerous administrative grievances that plaintiff filed during his stay at the Wood County jail. Dec. of Byron Wirth, dkt. 25, exhs. 3-25. These grievances were filed pursuant to the jail's inmate grievance procedure, which is set forth in the booklet entitled

“Wood County Jail Rules” that is provided to every inmate when he or she is processed into the general population. As Netz points out in his brief, none of the grievances that Matthews filed while he was in the Wood County jail complains about Lt. Netz placing him into administrative confinement. Further, there are no grievances in Matthews’s file in which he alleged that Netz retaliated against him by denying him privileges, namely, the law library, the name of the sheriff, access to his lawyer, visitors and GED classes.

In his response to the summary judgment motion, Matthews does not deny that he received a copy of the jail rules or that he knew about and utilized the inmate grievance procedure. Further, he does not appear to dispute Netz’s summary of the various grievances he filed during his incarceration; in fact, he reiterates verbatim the “Statement of Facts” from Netz’s brief. Finally, Matthews has not produced any evidence of his own to show that he met the exhaustion requirement.

Nonetheless, he disagrees with Netz’s contention that he did not exhaust his administrative remedies. With respect to the decision to place him in administrative confinement, Matthews relies on the rule that a prisoner must have a “meaningful opportunity” to exhaust his administrative remedies in order for them to be found “available,” arguing that he had no meaningful opportunity to exhaust this claim because he did not receive any appealable response to his grievance. Plt.’s Br. in Opp., dkt. 33, at 30. *See, e.g., Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002) (exhaustion not required where prison employees do not respond to a properly filed grievance or otherwise use affirmative misconduct to prevent a prisoner from exhausting).

It is unclear precisely to which grievance Matthews is referring. Matthews appears to be referring to a letter that he sent to the sheriff on April 1, 2012, in which he complained generally that jail officers were retaliating against him for filing grievances by talking to him in a “disrespectful manner” and subjecting him to “cruel and unusual punishment.” Dkt. 25, exh. 24. As Netz points out, however, sending a letter to the sheriff does not satisfy the grievance procedure and therefore no response to that letter was required.¹ *Maddox v. Love*, 655 F.3d 709, 721 (7th Cir. 2011) (“Section 1997e(a) requires ‘proper exhaustion’; that is, the inmate must file a timely grievance utilizing the procedures and rules of the state’s prison grievance process.”); *Woodford v. Ngo*, 548 U.S. 81, 93 (2006); *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002) (“To exhaust remedies, a prisoner must file complaints and appeals in the place, and at the time, the prison’s administrative rules require.”). Further, the letter did not mention anything about Netz, privileges or administrative confinement. Accordingly, this letter to the sheriff fails to establish that Matthews complied with the exhaustion requirement with respect to his claim that Netz retaliated against him by placing him in administrative confinement.

With respect to Netz’s alleged denial of privileges, Netz has carefully reviewed Matthews’s grievances and explained why none satisfies the exhaustion requirement with respect to this aspect of Matthews’s retaliation suit. Br. in Supp. of Summ. Judgment, dkt. 26, at 16-19. I have compared Netz’s brief to the grievance forms themselves and I agree with his analysis. Matthews states that he “disputes” Netz’s position on this point, but he offers no argument or evidence, just his own conclusory assertion. This is insufficient to defeat a motion for summary

¹ For what it’s worth, the sheriff *did* respond to that letter by meeting personally with Matthews on April 5, 2012. Matthews did not raise any issues or concerns relating to administrative confinement or restriction of privileges.

judgment. *Celotex Corp. v. Cartrett*, 477 U.S. 317, 322 (1986) (party responding to summary judgment motion may not rest upon mere allegations or denials, but must present specific facts affirmatively showing existence of genuine factual dispute).

ORDER

IT IS ORDERED that defendant's motion for summary judgment for lack of exhaustion is GRANTED and this case is DISMISSED WITHOUT PREJUDICE.

Entered this 18th day of January, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge