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

FREDDIE MCLAURIN,

Plaintiff,

v.

CCI UNIT 7 STAFF,

Defendants.

OPINION & ORDER

14-cv-59-wmc

In this proposed civil action, plaintiff Freddie T. McLaurin alleges that staff members at Columbia Correctional Institution ("CCI") have caused him various problems, including handling food and medications in an unsanitary manner, tampering with inmate mail, denying him showers, and passing a rule stating that inmates cannot order any kind of reading materials. McLaurin has been granted leave to proceed *in forma pauperis* and has paid his initial partial filing fee. Because McLaurin is incarcerated, the court must next screen his complaint, pursuant to 28 U.S.C. § 1915A, to determine whether it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. After reviewing McLaurin's materials, it is clear that McLaurin has failed to exhaust his administrative remedies, which is required before filing a civil action. Therefore, the court will dismiss his case without prejudice.

ALLEGATIONS OF FACT

In addressing any *pro se* litigant's pleadings, the court must read the allegations in the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For the purposes of this

order, the court accepts plaintiff's well-pled allegations as true and assumes the following facts:

Plaintiff Freddie McLaurin is currently incarcerated at CCI. He alleges having various problems with Unit 7 staff members and officers there. For example, he alleges that staff members do not wear gloves or hairnets when passing out medication and food and that they sometimes cough over inmate food; that they refuse showers to inmates; and that they tamper with inmate mail. He also alleges that a new rule has been put in place which forbids possession of "any magazines, books or pen pal stuff." Furthermore, he alleges, staff members are able to get away with wrongful behavior, including smoking cigarettes, chewing tobacco and threatening inmates.

McLaurin seeks damages of $590,000,000.00 and a transfer from CCI to a different prison, such as Oshkosh Correctional Institution.

OPINION

As a preliminary matter, McLaurin's complaint suffers from a number of basic defects. Most glaring, he has not named any particular defendants in this suit. Section 1983 only authorizes lawsuits against *persons* who have acted under color of state law, meaning that the "CCI Unit 7 Staff" as a whole cannot be held liable under that statute. *See* 42 U.S.C. § 1983. Furthermore, an individual cannot be held liable in a § 1983 action like this one unless he caused or participated in an alleged constitutional deprivation. *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983). McLaurin has simply alleged that CCI Unit 7 staff *in general* participated in problematic conduct, but this is not enough for the

court to determine what individuals, if any, were personally involved in the conduct he alleges.

Additionally, McLaurin concedes in his pleadings that he did *not* exhaust all available administrative remedies before filing his complaint in federal court. The PLRA, 42 U.S.C. § 1997e(a), provides that "[n]o 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 the Seventh Circuit, "[e]xhaustion of administrative remedies . . . is a condition precedent to suit." *Dixon v. Page*, 291 F.3d 485, 488 (7th Cir. 2002); *see also Perez v. Wis. Dep't of Corr.*, 183 F.3d 532, 535 (7th Cir. 1999) (holding that where administrative remedies have not been exhausted, "the district court lacks discretion to resolve the claim on the merits"). Additionally, the PLRA requires "proper exhaustion; that is, the inmate must file a timely grievance utilizing the procedures and rules of the state's prison grievance process." *Maddox v. Love*, 655 F.3d 709, 720 (7th Cir. 2011) (internal quotation marks omitted). Essentially, this means that if an inmate does not exhaust his administrative remedies by making use of the prison's grievance system to the fullest extent possible, this court cannot consider the merits of his lawsuit.

Exhaustion of administrative remedies is an affirmative defense. Generally, judges do not entertain affirmative defenses when conducting pre-service screening. The Seventh Circuit has held that judges may nevertheless invoke affirmative defenses at the screening stage "if [an affirmative defense] is so plain from the language of the complaint and other documents in the district court's files that it renders the suit frivolous." *Gleash v. Yuswak*, 308 F.3d 758, 760 (7th Cir. 2002).

Here, McLaurin acknowledges that he has not filed a grievance related to any of the facts alleged in his complaint. Instead, he indicates that he wrote to the Security Director and never received a response. (*See* Compl. (dkt. #1) 1.) This is not sufficient to exhaust his administrative remedies, and so the court must dismiss his lawsuit. This dismissal is without prejudice, however, meaning that McLaurin is free to refile this lawsuit if and when he exhausts all of his administrative remedies. *See Greene v. Meese*, 875 F.2d 639, 643 (7th Cir. 1989).

ORDER

IT IS ORDERED that plaintiff Freddie McLaurin's request for leave to proceed is DENIED. This lawsuit is DISMISSED without prejudice, subject to plaintiff's exhausting his administrative remedies.

Entered this 7th day of April, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge