

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Eric Samuel #277784,
Plaintiff,

v.

South Carolina Department of Corrections,
Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-08-02475

RECEIVED

JUL 01 2015

SC Court of Appeals

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

Presiding Judge:
Date of Hearing:
Plaintiff's Attorney:
Defendant's Attorney:
Court Reporter:

Deadra L. Jefferson
May 14, 2015
Pro se
Peter Balthazor, Esq.
Denise Lauder

FILED
2015 JUN 10 PM 3:23
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

This matter came before the Court for a hearing on May 14, 2015, on Defendant's Motion to Dismiss. Appearing at the hearing on behalf of the Defendant was Peter M. Balthazor, Esquire. Plaintiff, Pro se, also attended the hearing.

Plaintiff is an inmate incarcerated within the South Carolina Department of Corrections. In his Complaint in this matter, Plaintiff challenges the conditions of his confinement. Plaintiff alleges he was placed in SMU (Special Management Unit) for protective concerns, and that he was not allowed outdoor recreation for approximately 45 days.¹

Defendant has moved to dismiss Plaintiff's Complaint on the ground that Plaintiff has failed to exhaust his administrative remedies. Plaintiff states in his Complaint that he filed a grievance with the institution, but that the grievance was returned unprocessed.

¹ The Plaintiff first complained of his denial of outdoor activity on June 23, 2014 and subsequently filed a complaint on July 23, 2014. He confirmed that subsequently his outdoor activities were restored and have remained intact as of the date of this hearing.

At the hearing on this matter, Plaintiff acknowledged that his privileges have been restored and that he has been transferred to a different institution. Plaintiff indicated to the Court that he was bringing this lawsuit so that his outdoor recreation privileges would not be restricted in the future.

It is clear that Plaintiff's claim in this matter is of an administrative nature, and that Plaintiff's right to judicial review of Defendant's classification and housing decision lied in an appeal to the Administrative Law Court. Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). The facts alleged by Plaintiff do not make a prima facie case of atypical and significant hardship on Plaintiff or an arbitrary, capricious, or biased decision by Defendant's officials and, therefore, the circuit court has no authority to intervene. Skipper v. South Carolina Dep't of Corrections, 370 S.C. 267, 272, 633 S.E.2d 910, 913 (Ct. App. 2006).

The South Carolina Supreme Court has concluded that an inmate may seek review of the Department's final decision in an administrative matter under the Administrative Procedures Act. Al-Shabazz v. State, 338 S.C. at 369, 527 S.E.2d at 750. Although the Court opined that it was "not holding that all APA provisions apply to the internal prison disciplinary or decision-making processes[,] it held that issues relating to "conditions of imprisonment" are administrative matters "within the ambit of the APA" Id. (emphasis added). As Plaintiff is seeking a judicial determination regarding conditions of his imprisonment, this matter is governed by the APA and Plaintiff is required to follow administrative procedures to obtain judicial review. The process for administratively filing an inmate grievance has been summarized as follows:

- (1) an inmate must fill out a Form 10-5 (Step 1 Grievance form) to explain his complaint and give the form to an employee designated by the Warden within fifteen (15) days of the alleged incident;
- (2) the Warden designee has nine (9) working days from the time the grievance is presented to put it into SCDC's automated system;
- (3) the Warden should respond to the grievant in writing within forty (40) days;
- (4) the inmate may appeal by completing a Form 10-5a

2004
JPA

(Step 2 Appeal) and submitting it to the Inmate Grievance Coordinator within five (5) calendar days of receipt of the response; and (5) a responsible SCDC official will have sixty (60) days to respond to the Step 2 grievance plus five (5) days for the grievant to be served.

Jones v. Kay, 2007 WL 4292416 (D. S.C. 2007). Plaintiff has not shown that this process was unavailable to him. See also Hendricks v. South Carolina Dep't of Corrections, 385 S.C. 625, 686 S.E.2d 191 (2009) (setting forth the administrative steps necessary prior to an appeal from the ALC; the inmate filed a grievance, and appealed the Department's finding to the ALC).

Plaintiff alleged that he filed a Step 1 grievance that was returned to him unprocessed. Instead of re-filing the grievance, Plaintiff brought this action. Plaintiff has not alleged that Defendant's failure to process his grievance was incorrect, or in error. Plaintiff does not allege any facts as to why his grievance was not processed. To exhaust administrative remedies, a person must follow the rules governing filing and prosecution of a claim. Randolph v. Redfearn, 2006 WL 1687449 (D.S.C. 2006). An unprocessed grievance is not a final decision by Defendant.

Moreover, the first step in this process is for an inmate to file a grievance within 15 days of the incident. Plaintiff claims that by June 23, 2014, he complained to prison officials regarding the conditions of his confinement. However, Plaintiff also states that he did not file a grievance until July 23, 2014. Therefore, Plaintiff's grievance was untimely. Plaintiff has also not demonstrated that the grievance process was unavailable. See Bryan v. South Carolina Dep't of Corrections, 2009 WL 702864 (D. S.C. 2009) (finding that unprocessed grievances are insufficient to show that inmate was prevented from exhausting administrative remedies where the inmate argued that Department failed to process his grievances).

Therefore, this Court finds that Plaintiff failed to exhaust his administrative remedies prior to bringing this action. The matter alleged by Plaintiff is an administrative matter

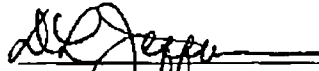
concerning conditions of Plaintiff's imprisonment, and Plaintiff's remedy was through the administrative process. As alleged by Plaintiff, he failed to follow the administrative process and his grievance was not processed.

In addition, Plaintiff informed the Court that his outdoor recreation privileges have been restored, and that he is seeking only prospective relief in this action – Plaintiff does not want to be denied outdoor recreation in the future if he is placed in SMU. Therefore, this Court finds that Plaintiff's claim is moot, and should be dismissed. See Williams v. Ozmint, 716 F.3d801 (4th Cir. 2013) (finding a claim is mooted where an inmate has received the restoration of privileges).

CONCLUSION

The Court hereby orders that Plaintiff's Complaint should be dismissed, with prejudice.

IT IS SO ORDERED.



Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

June 4, 2015

Charleston, South Carolina
At Chambers

4
10/4
SPG