

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

JOSE CHAVEZ,

Plaintiff

v.

MR. MEDON, Unit Manager,

Defendant

: CIVIL ACTION NO. 3:CV-05-1556

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: (Judge Nealon)

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MEMORANDUM AND ORDER

Jose Chavez ("Chavez"), an inmate formerly confined in the State Correctional Institution, Coal Township, Pennsylvania¹ ("SCI-Coal Township), filed this pro se civil rights action pursuant to 42 U.S.C. §1983. The sole defendant is Robert Medon, Plaintiff's Unit Manager at the time of the alleged incident at SCI-Coal Township. Plaintiff claims that Medon was deliberately indifferent to Chavez's complaint that his cellmate was threatening to assault him. (Doc. 1, complaint). Chavez claims that he reported the threat to Medon; that Medon failed to protect him; and, as a result, Plaintiff was attacked and injured by his cellmate.

1. Chavez is currently housed in the State Correctional Institution, Dallas, Pennsylvania.

Id.

Presently before the Court is Defendant's motion for summary judgment² in which Defendant argues that Chavez has failed to exhaust available administrative remedies. (Doc. 31). The motion is fully briefed and is ripe for disposition. For the reasons set forth below, the Defendant's motion for summary judgment will be granted.

Standard of Review

Federal Rule of Civil Procedure 56(c) requires the court to render summary judgment " . . . forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). "[T]his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty

2. Also before the Court is Plaintiff's motion to compel discovery. (Doc. 23). However, because the information sought in the Plaintiff's discovery motion goes to the merits of Plaintiff's complaint and Plaintiff's complaint is procedurally barred, the motion will be dismissed.

Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original).

A disputed fact is "material" if proof of its existence or nonexistence would affect the outcome of the case under applicable substantive law. Anderson, 477 U.S. at 248; Gray v. York Newspapers, Inc., 957 F.2d 1070, 1078 (3d Cir. 1992). An issue of material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson, 477 U.S. at 257; Brenner v. Local 514, United Brotherhood of Carpenters and Joiners of America, 927 F.2d 1283, 1287-88 (3d Cir. 1991).

When determining whether there is a genuine issue of material fact, the court must view the facts and all reasonable inferences in favor of the nonmoving party. Moore v. Tartler, 986 F.2d 682 (3d Cir. 1993); Clement v. Consolidated Rail Corporation, 963 F.2d 599, 600 (3d Cir. 1992); White v. Westinghouse Electric Company, 862 F.2d 56, 59 (3d Cir. 1988). In order to avoid summary judgment, however, the nonmoving party may not rest on the unsubstantiated allegations of his or her pleadings. When the party seeking summary judgment satisfies its burden under Rule 56(c) of identifying evidence which demonstrates the absence of

a genuine issue of material fact, the nonmoving party is required by Rule 56(e)³ to go beyond the pleadings with affidavits, depositions, answers to interrogatories or the like in order to demonstrate specific material facts which give rise to a genuine issue. Celotex Corporation v. Catrett, 477 U.S. 317, 324 (1986). The party opposing the motion "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Electric Industrial Co. v.

2.Chavez was provided with copies of M.D. Pa. Local Rules 7.1 through 7.8, Local Rule 26.10, and Federal Rule of Civil Procedure 56(e). In relevant part, Rule 56(e) states:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Local Rule 7.4 provides in relevant part:

All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.

(See Doc. 4, Standing Practice Order).

Zenith Radio, 475 U.S. 574, 586 (1986). When Rule 56(e) shifts the burden of production to the nonmoving party, that party must produce evidence to show the existence of every element essential to its case which it bears the burden of proving at trial, for "a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Celotex, 477 U.S. at 323. See Harter v. G.A.F. Corp., 967 F.2d 846, 851 (3d Cir. 1992).

Statement of Facts

From the pleadings, declarations and exhibits submitted therewith, the following facts can be ascertained as undisputed.

On March 25, 2004, Chavez was involved in an altercation with his cellmate. (Doc. 1, complaint). After the altercation, Chavez was placed in the RHU, where he remained until his transfer to SCI-Dallas, on or about September 2, 2004. (Doc. 17, ¶ 19).

On August 3, 2005, Chavez filed the above captioned action in which he alleges that he did not file a grievance concerning the incident because he was "placed in the 'RHU' and could not get assistance", because he is Spanish and "cannot read or write English." (Doc. 1, complaint at ¶ II B). Specifically, Chavez states that "the DC-804 grievance procedures were unavailable to Plaintiff, a

Mexican, who speaks Spanish and very little English[.] [D]ue to not being able to get any Bilingual assistance...the exhaustion requirements should be excused.”

(Doc. 17, Plaintiff's “traverse” at ¶ 20).

The longstanding protocol in the RHU at SCI-Coal Township is that if an inmate asks for a grievance form or a request to staff member form he is to be given one unconditionally. (Doc. 33, Ex. D, Declaration of Stephen Gooler, SCI-Coal Township RHU Lieutenant, at ¶ 3). If the inmate speaks Spanish, rather than English, there are Department employees available, upon request, including a paralegal and several teachers, who can provide bilingual assistance. *Id.* at ¶ 4. An inmate grievance is not rejected on the basis that it is not written in English and is accepted at every level despite that fact. (Doc. 33, Ex. A, Declaration of Kristen P. Reisinger, Assistant Chief Grievance Coordinator for the Secretary's Office of Inmate Grievances and Appeals at ¶ 6). Where the institution has an employee who speaks the same language as the inmate who files a grievance, the protocol is to have that employee translate the grievance. *Id.* at ¶ 7. Where the institution does not have an employee who speaks the language, in which the grievance is written, the institution will obtain and pay for an outside translating service to translate the grievance. *Id.* at ¶ 8.

Although Chavez's native language is Spanish, he is able to speak English well enough: 1) to ask if he is permitted to fill out a grievance form in Spanish; 2) to ask for a Spanish version of the grievance form; and 3) to ask for bilingual assistance. (Doc. 33, Ex. C, Declaration of Benjamin Barsh, SCI-Dallas Corrections Counselor). In the past, Plaintiff has requested and been supplied with grievance forms, enabling him to file the following unrelated grievances while housed at SCI-Coal Township: Grievance Numbers 58513, dated August 3, 2003; 57193 dated July 4, 2003; 55519 dated June 26, 2003; and 29061 dated August 22, 2002. (Doc. 33, Ex. B, Kandis K. Dascani, SCI-Coal Township Corrections Superintendent Assistant 2).

Discussion

Section 1997e(a) of title 42 U.S.C. 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.” This “exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” Porter v. Nussle, 534 U.S. 516, 532 (2002).

A prisoner must exhaust all available administrative remedies before initiating a federal lawsuit. Booth v. Churner, 532 U.S. 731, 739 (2001). Failure to exhaust available administrative remedies is an affirmative defense. Ray v. Kertes, 285 F.3d 287 (3d Cir. 2002). As such, the failure to exhaust available administrative remedies must be pleaded and proven by the Defendants. Brown v. Croak, 312 F.3d 109, 111 (3d Cir. 2002).

Defendants have properly raised the matter of exhaustion of administrative remedies made available to inmates confined within the Department of Corrections. (Doc. 15, Answer). The Pennsylvania Department of Corrections' administrative remedies for inmate grievances are provided for in Department of Corrections Administrative Directive 804 ("DC-ADM 804"). (Doc. 33, Ex. 1, Policy Statement). This policy establishes the Consolidated Inmate Grievance Review System, through which inmates can seek to resolve issues relating to their incarceration. The first step in the inmate grievance process is initial review. Id. Grievances must be submitted for initial review within 15 working days after the event upon which the grievance is based. Id. After initial review, the inmate may appeal to the superintendent of their institution. Id. Upon completion of the initial review and the appeal from the initial review, an inmate may seek final review. Id.

The record before the Court demonstrates that the Plaintiff has failed to exhaust his administrative remedies prior to filing the above captioned action. Plaintiff offers nothing to refute the above. His brief in opposition and his supporting "affidavit" offer only unsupported allegations of interference by prison guards in the filing process. (See Docs. 35, 36). Specifically, Plaintiff claims that "even though [he] requested, [he] was not provided with Inmate Grievance Forms, nor Bilingual assistance to construct a Grievance against Defendant Medon in accordance with DC-ADM 804 Policy." *Id.* He produces no evidence from his five month period in the RHU, as to whom he asked to help him secure bilingual assistance, an interpreter and/or grievance forms, when he asked for such type of assistance, or how often he made his needs known. Thus, Plaintiff's "affidavit" does not create any dispute as to a material fact.

Federal Rule of Civil Procedure 56(c) requires that the party who bears the burden of proof make a sufficient showing to establish the existence of an element essential to that party's case. Rule 56(e) specifies the type of evidentiary materials which must be submitted. Thus, even had Defendant Medon submitted no evidentiary matters, the burden would still be on the Plaintiff to sustain his burden. Celotex v. Catrett, 477 U.S. 317 (1986). What Plaintiff has done is submit a so

called "affidavit", unsupported by any evidentiary materials, which amounts to a mere elaboration of the allegations in his complaint, and this he cannot do. See Applegate v. Top Associates, Inc., 425 F.2d 92 (2nd Cir. 1970). (A mere elaboration of conclusory pleadings is insufficient). As the Court of Appeals in Quiroga v. Hasbro, Inc., 934 F.2d 497 (3d Cir. 1991) has held that, a party opposing summary judgment may not rest upon mere allegations, general denials, or vague statements that conduct occurred. The evidence submitted must show more than some metaphysical doubt as to the material facts. Id. at 500. Thus, the Court finds that all competent evidence of record in this case demonstrates that Chavez simply failed to properly exhaust administrative remedies. The failure to pursue the appropriate administrative process with respect to his claims precludes the litigation of such claims.

In Spruill v. Gillis, 372 F.3d 218, 230 (3d Cir. 2004), our Court of Appeals held that congressional policy objectives were best served by interpreting the statutory "exhaustion requirement to include a procedural default component." The court further ruled that procedural default under § 1997e(a) is governed by the applicable prison grievance system, provided that the "prison grievance system's procedural requirements [are] not imposed in a way that offends the Federal

Constitution or the federal policy embodied in § 1997e(a).” Id. at 231, 232.

In this case, the record clearly discloses that Chavez failed to file an initial grievance. To the extent that Plaintiff “suggests that he exhausted his available Administrative remedies” because he filed an “informal 135A resolution request to staff member directly to the Defendant and received no response” (Doc. 35, pp. 5, 6), the procedure contemplates several tiers of review and the grievance review system is not exhausted when an inmate files an informal resolution and then takes no other action through established grievance procedure when his attempt to informally resolve his grievance is not resolved to his satisfaction. Plaintiff’s next step would have been to file an initial grievance with the Grievance Officer. Plaintiff, admittedly, did not. Thus, he has sustained a procedural default under the applicable DOC regulations.

Spruill cited with approval the Seventh Circuit decision in Pozo v. McCaughtry, 286 F.3d 1022, 1025 (7th Cir. 2002). Spruill, 372 F.3d at 231. In Pozo, the Seventh Circuit ruled that “to exhaust remedies, a prisoner must file complaints and appeals in the place, and at the time, the prison’s administrative rules require.” Pozo, 286 F.3d at 1025 (emphasis added). Chavez offers no justification for his

failure to exhaust his administrative remedies. Thus, Chavez is now foreclosed from litigating this claim in this Court.

In Spruill, the Third Circuit found that a procedural default component to the exhaustion requirement served the following congressional objectives: “(1) to return control of the inmate grievance process to prison administrators; (2) to encourage development of administrative record, and perhaps settlements, within the inmate grievance process; and (3) to reduce the burden on the federal courts by erecting barriers to frivolous prisoner lawsuits.” 372 F.3d at 230. In Pusey v. Belanger, No. Civ. 02-351, 2004 WL 2075472 at *2-3 (D. Del. Sept. 14, 2004), the court applied Spruill to dismiss an inmate’s action for failure to timely pursue an administrative remedy over the inmate’s objection that he did not believe the administrative remedy program operating in Delaware covered his grievance. In Berry v. Kerik, 366 F.3d 85, 86-88 (2d Cir. 2004), the court affirmed the dismissal of an inmate’s action with prejudice where the inmate had failed to offer appropriate justification for the failure to timely pursue administrative grievances. In Ross v. County of Bernalillo, 365 F.3d 1181, 1186 (10th Cir. 2004), the court embraced the holding in Pozo, stating that “[a] prison procedure that is procedurally barred and thus is unavailable to a prisoner is not thereby considered

exhausted.” These precedents support this Court's decision to enter judgment in favor of Defendant Medon. An appropriate Order will be entered.

Date: May 17, 2006

s/ William J. Nealon
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

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| JOSE CHAVEZ, | : | CIVIL ACTION NO. 3:CV-05-1556 |
| Plaintiff | : | (Judge Nealon) |
| | : | |
| v. | : | |
| | : | |
| MR. MEDON, Unit Manager, | : | |
| Defendant | : | |

ORDER

AND NOW, this 17th day of **MAY, 2006**, for the reasons set forth in the accompanying Memorandum, **IT IS HEREBY ORDERED THAT:**

1. Defendant's motion for summary judgment (Doc.31) is **GRANTED**. Judgment is hereby entered in favor of Defendant Medon and against the Plaintiff.
2. Plaintiff's motions to compel (Doc. 23) and for appointment of counsel (Doc. 19) are **DISMISSED** as moot.
3. The Motion to Withdraw the Appearance of Quintina M. Laudermilch, as attorney for Defendant Robert Medon, and enter the appearance of Assistant Counsel Debra Sue Rand (Doc. 29), is **GRANTED**. The Clerk of Courts is directed to withdraw the appearance of Assistant Counsel Quintina M. Laudermilch in this matter, and serve any future documents for Defendant Medon upon Assistant Counsel Debra Sue Rand.

4. The Clerk of Court is directed to **CLOSE** this case.
5. Any appeal taken from this order will be deemed frivolous, without probable cause, and not taken in good faith.

s/ William J. Nealon
United States District Judge