

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES E. OWENS,

Plaintiff,

vs.

KENNETH KYLER, ET AL.,

Defendants.

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: CIVIL NO. 3:CV-02-1987
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: (CHIEF JUDGE VANASKIE)
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MEMORANDUM

INTRODUCTION

James E. Owens, an inmate at the State Correctional Institution at Huntingdon (SCI-Huntingdon), Pennsylvania, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 1, 2002. He proceeds pro se and in forma pauperis in this matter.¹ Named as Defendants are Jeffrey Beard, Secretary of the Department of Corrections (DOC), and SCI-Huntingdon employees Kenneth Kyler, Superintendent; James Grace, Deputy Superintendent for Facility Management; and Scott Williamson, Deputy Superintendent of Treatment.

¹ On April 2, 2003, the Court denied a motion for appointment of counsel filed by Owens on February 27, 2003. (Dkt. No. 23.) Pending is a motion filed by Owens seeking reconsideration of this Order. (Dkt. No. 25.)

(Collectively referred to herein as the "Corrections Defendants.") Also named as a defendant is Dr. Hawkins, who is referred to by Owens as a visiting or substitute prison doctor. Owens further names the following SCI-Huntingdon contract medical providers: Dr. Ariago; Mr. Cain, Physician's Assistant; Dr. Reiners; and Dr. Arias. (Collectively referred to herein as the "Wexford Defendants."). A John Doe defendant – the Director of Wexford Health Care Services, the contract medical service provider – is also named by Owens as a defendant.² In the complaint, Owens contends that, beginning in May of 2001, he was denied adequate medical care by Defendants for abdominal and urinary problems he was experiencing. He seeks injunctive, compensatory and punitive relief.

On December 16, 2002, service of the complaint was directed. (Dkt. No. 7.) The Corrections Defendants filed a motion to dismiss the complaint, or motion for more definite statement on February 7, 2003.³ (Dkt. No. 13.) On February 24, 2003, motions to dismiss

² Because this Doe defendant has never been identified by Owens, and as such, the United States Marshal has been unable to effectuate service of the complaint on this defendant, he will be dismissed from this action.

³ The Corrections Defendants attach as exhibits to their motion the unsworn declarations of Diana Baney, Assistant Superintendent at SCI-Huntingdon, and Thomas James, Special Assistant to the Secretary of the DOC. (Dkt. No. 15, Exs. A, B.) These declarations address the issue of whether Owens has exhausted his administrative remedies. Attached to the declarations are a grievance filed by Owens and the responses and appeals relating thereto. (Dkt. No. 15.) Also attached is a copy of DC-ADM 804 which sets forth the

were also filed by the other Defendants in this action.⁴ (Dkt. Nos. 16, 18.) These motions are ripe for consideration.

BACKGROUND

The complaint submitted by Owens consists of the Court's pre-printed § 1983 civil rights complaint form, as well as an eleven (11) page typewritten document which identifies the defendants in this action, and sets forth the underlying factual averments in chronological order. Attached to this document are various exhibits.⁵ The "Statement of Claim" section of the

Pennsylvania DOC Inmate Grievance System. Because Owens himself states in his complaint that he has exhausted his claims, and attaches as exhibits copies of relevant documents to demonstrate exhaustion, it is proper for the Court to consider the documents without the necessity of converting the motion into a motion for summary judgment. See Pension Benefit Guar. Corp. v. White Consol. Indus. Inc., 998 F.2d 1192, 1196 (3d Cir. 1993) ("We now hold that a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document." Furthermore, Owens attaches copies of documents in support of his exhaustion argument to his brief in opposition to the motions to dismiss filed in this action. (Dkt. No. 24.) Finally, it should be noted that Owens does not challenge the authenticity of the documents accompanying the Corrections Defendants' motion.

⁴ The Wexford Defendants filed a motion to dismiss or for a more definite statement (Dkt. No. 16), and Defendant Hawkins filed a motion to dismiss the complaint (Dkt. No. 18).

⁵ The exhibits include copies of medical department passes and prescription receipts. Also submitted are copies of Inmate Request to Staff Member forms dated 7/10/02 and replies thereto, a grievance filed by Owens dated August 13, 2002 (Grievance # 28444), responses to Grievance # 28444 from the grievance coordinator and the superintendent at SCI-Huntingdon, and a copy of a letter to Owens from the Central Office with respect to Grievance # 28444.

complaint begins at paragraph number 17 and continues through paragraph 33, with the page containing paragraphs 21 through 23 missing. Paragraph 33 also appears to end abruptly, and is followed by Owens' "Request for Relief" section of the complaint.

Owens alleges that on May 27, 2001, he began experiencing pain in his abdominal region. Several days later he signed up for medical screening and was seen by Defendant Cain, a physician's assistant at SCI-Huntingdon. Cain examined Owens' abdominal area, noted some swelling and prescribed hot compresses. He did not refer Owens to a doctor.

Owens again signed up for sick call on a later unspecified date due to pain he was still experiencing in his abdominal area. He was seen by Cain, who informed him that he "worried too much," and that the problem should heal itself within 3 to 6 weeks. (Dkt. No. 1, Supp. at ¶ 19.)

Thereafter, on or about June 21, 2001, Owens was sent to the infirmary by his prison job supervisor after complaining that he was unable to urinate and was experiencing pain. It is at this point in the complaint where three paragraphs of Owens' claims are missing.⁶ It appears however, that some time later in the day on June 21, 2001, a nurse from the infirmary came to Owens' cell. She checked his temperature, noted a slight fever and provided Owens

⁶ The missing paragraphs appear to cover the remaining events alleged to have occurred on June 21, 2001.

with Tylenol. He was also scheduled to see a doctor the following morning.

The next day Owens informed his Block Officer that he was having pain, and believed that his “. . . bladder had dropped down to [his] scrotum and that it felt like something was ripping inside of [him] around [his] abdomen area. . . .” (Doc. No. 1, Supp. at ¶ 25.) Owens was sent to the infirmary where he was seen by Defendant Ariago. Ariago performed a rectal examination and collected a urine sample. Ariago thereafter instructed an unidentified physician’s assistant to schedule Owens to see a surgeon the following day. In addition, Owens was prescribed antibiotics, and instructed to take Tylenol and drink fluids.

On June 23, 2001, the following day, Owens was called to the infirmary to see Defendant Reiners. He was examined and told to take Tylenol with a full glass of water. When Owens asked Reiners what was wrong with him, Reiners responded by telling Owens he could leave.

Two days later, Owens again signed up for sick call. He was initially seen by Defendant Cain, who then referred him to Defendant Ariago. Owens states that he “was not given anything, nor did [Ariago] fully examine [him] for the catheter.” (*Id.* at ¶ 27.)

Owens was called down to the medical department on June 26, 2001, and informed that Tylenol had been ordered for him. He told the attending physician that he was

experiencing problems sitting down, using his stool, and sleeping on his stomach. Owens was advised to sleep with a pillow between his legs and elevate his feet because “. . . it would take time to heal a wound like his.” (Id. at ¶ 28.)

Following complaints made to his work supervisor of pain and an enlarged scrotum, a medical lay-in was issued for Owens on July 11, 2001, by the prison medical department. Unit Manager Ogershok later checked on Owens and, after “noticing something” in his abdominal area, contacted the medical department. (Id. at ¶ 30.) He thereafter informed Owens that he would be going to the hospital that afternoon.

Later that day, Owens was called to the infirmary and given another rectal examination by Defendant Ariago. A urine sample was again collected. Ariago thereafter informed Owens that he had an infection. Owens did not agree with this diagnosis, and believes he needed a catheter. Ariago also informed Owens that he would be going to the hospital later that day.

On July 11, 2001, Owens was transferred to the State Correctional Institution at Smithville, Pennsylvania, where urine samples were taken. After explaining to the medical staff the problems he was having, Owens was checked for kidney stones. Several days later x-rays were also performed. Owens was thereafter informed that he did not have kidney stones or an infection. He was advised by SCI-Smithfield that they were unable to treat his “hernia” because

he was sent there for kidney stones. Owens maintains that up until this point, he was never informed that he had a hernia. He was thereafter returned to SCI-Huntingdon without further treatment.

On July 22, 2001, Owens received a routine physical examination by an outside doctor in the medical department at SCI-Huntingdon. During the exam, he was asked about "the results of his sonogram." (Doc. 1, Supp. at ¶ 33.) Owens states that he had no idea any such test had been performed. The doctor thereafter explained to him that a sonogram had previously detected a hernia on the right side of his pelvic region.⁷

Based upon these allegations Owens contends that his Eighth Amendment right to be free from deliberate indifference to serious medical needs was violated by Defendants. As relief, he requests that his present medical problem be repaired by a specialist trained in the field of internal medicine. He further seeks monetary and punitive damages.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) allows a defendant, in response to a complaint, to file a motion to dismiss a complaint for "failure to state a claim upon which relief can be granted" A motion to dismiss should not be granted if "under any reasonable

⁷ At this point in the Statement of Claim, plaintiff appears to stop mid-sentence at the end of the page. The following page contains his request for relief in this action. (Dkt. No. 1 at 3.)

reading of the pleadings, the plaintiff [] may be entitled to relief. . . ." Langford v. City of Atlantic City, 235 F.3d 845, 847 (3d Cir. 2000). In making that decision, we must accept as true all well-pleaded allegations in the complaint, Maio v. Aetna, Inc., 221 F.3d 472, 481-82 (3d Cir. 2000), and construe any reasonable inferences to be drawn from them in the plaintiff's favor. See United States v. Occidental Chemical Corp., 200 F.3d 143, 147 (3d Cir. 1999).

Consequently, the court need not accept "bald assertions" or "legal conclusions." Morse v. Lower Merion School District, 132 F.3d 902, 906 (3d Cir. 1997). Likewise, the court need not "conjure up unpled allegations or contrive elaborately arcane scripts" in order to breathe life into an otherwise defective complaint. Gooley v. Mobil Oil Corp., 851 F.2d 513, 514 (1st Cir. 1988). A district court should provide leave to amend "when amendment could cure the deficiency and would not be inequitable." Grayson v. Mayview State Hospital, 293 F.3d 103, 106 (3d Cir. 2002). A complaint that sets forth facts which affirmatively demonstrate that the plaintiff has no right to recover, however, is properly dismissed without leave to amend. Id.; see also Estelle v. Gamble, 429 U.S. 97, 107-08 (1976).

DISCUSSION

The Corrections Defendants move to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(6) on the basis of failure to exhaust administrative remedies pursuant to 42 U.S.C.

§ 1997e(a). They set forth three separate grounds in support of their argument. First, Defendants claim that Owens only filed one grievance remotely pertinent to the claim asserted in his complaint, Grievance # 28444, and that the grievance did not name or seek relief due to the actions of Defendants Beard, Kyler, Grace or Williamson. Defendants next maintain that the relief Owens requests in his complaint – monetary damages and the assignment of an internal medicine expert – was not sought in the administrative remedy process. Third, even if Owens had requested such relief in pursuing Grievance # 28444, he did not complete the grievance review system prior to filing this action.

In addition to the exhaustion ground, Corrections Defendants contend that 12(b)(6) relief is warranted in that Owens fails to state any Eighth Amendment violations against them. Finally, Corrections Defendants argue that should their motion to dismiss be denied on the foregoing grounds, a more definite statement by Owens pursuant to Fed. R. Civ. P. 12(e) is required since the instant complaint is missing paragraphs 21-23, and abruptly ends at paragraph 33, as Owens begins describing the events of July 22, 2001.

Defendant Hawkins pursues 12(b)(6) relief on the ground that other than identifying her in the caption, and stating that she provided him with medication after he complained of medical problems, Owens complaint is void of any allegations of wrongdoing against her.

(Dkt. No. 16.) In addition, Hawkins also contends that Owens has failed to exhaust his administrative remedies pursuant to 42 U.S.C. § 1997e(a) because (1) he did not seek the requested relief against her in the grievance procedure and (2) he never completed the final step of review.

The Wexford Defendants also seek dismissal of the complaint on the basis of failure to exhaust pursuant to 42 U.S.C. § 1997e(a), as well as the failure of Owens to state an Eighth Amendment deliberate indifference medical claim. In the alternative, they seek a more definite statement pursuant to Rule 12(e) based upon the same rationale set forth above by the Corrections Defendants.

For the reasons that follow, the Court finds the exhaustion argument to be dispositive on all three motions. Because of this finding, it is unnecessary to assess the sufficiency of Owens' averments, or direct that a more definite statement be filed by Owens in this case.

A. Failure to Exhaust Administrative Remedies

Section 1997(e) of Title 42 U.S.C. provides:

No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), 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.

The Supreme Court has made clear that prisoners must exhaust administrative remedies as to any claim that arises in the prison setting, regardless of any limitations on the kind of relief that may be gained through a grievance process. See Porter v. Nussle, 534 U.S. 516, 532 (2002) (“the PLRA’s 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”); Booth v. Churner, 532 U.S. 731, 741 n.6 (2001) (“Congress has provided in § 1997e(a) that an inmate must exhaust [administrative remedies] irrespective of the forms of relief sought and offered through administrative avenues”). Thus, prisoners are required to exhaust available administrative remedies prior to seeking relief pursuant to § 1983 or any other federal law. The Third Circuit Court of Appeals has concluded that “it is beyond the power of this court ... to excuse compliance with the exhaustion requirement.” Nyhuis v. Reno, 204 F.3d 65, 73 (3d Cir. 2000). However, compliance with the administrative remedy scheme will be satisfactory if it is substantial. Id. at 77-78.

The Pennsylvania Department of Corrections has a Consolidated Inmate Grievance Review System. DC-ADM 804 (effective January 1, 2001). With certain exceptions not applicable here, DC-ADM 804, Section VI (“Procedures”) provides that, after attempted informal resolution of the problem, a written grievance may be submitted to the Grievance Coordinator;

an appeal from the Coordinator's decision may be made in writing to the Facility Manager or Community Corrections Regional Director; and a final written appeal may be presented to the Secretary's Office of Inmate Grievances and Appeals. A prisoner, in seeking review through the grievance system, may include requests for "compensation or other legal relief normally available from a court." (DC-ADM 804-4, issued April 29, 1998.) Furthermore, although "[g]rievances must be submitted for initial review to the Facility/Regional Grievance Coordinator within fifteen (15) days after the events upon which the claims are based," extensions of time for good cause "will normally be granted if the events complained of would state a claim of a violation of a federal right." (*Id.*) In exhausting his claims, an inmate must avail himself of all three stages of the administrative process. *Booth*, 532 U.S. at 735. Further, it is well established that the exhaustion process must be completed prior to the time an inmate files his civil action with the court, not while the suit is pending. *See Ahmed v. Sromovski*, 103 F.Supp.2d 838, 843-44 (E.D. Pa. 2000).

Corrections Defendants have submitted the unsworn declaration of Diana Baney, Assistant Superintendent at SCI-Huntingdon, who has the responsibility of maintaining a record of the grievances filed by inmates at SCI-Huntingdon. (Dkt. No. 15, Ex. A-1.) Baney conducted a search of the grievance appeal records at the prison and found that Owens only filed one

grievance (Grievance #28444) with regard to medical issues during the time period from January 2001 to the present.⁸ Attached to Baney's declaration is a copy of Grievance # 28444 filed with Baney on August 13, 2002, in accordance with Step 1 of the required DC-ADM 804 grievance procedure. In the grievance, Owens complains of improper medical treatment by the prison's medical department with regard to the repair of his hernia in the summer of 2002 and follow-up care. The majority of the grievance complains about Owens' belief that metal has been left in his body post-surgery, and sets forth his requests that x-rays and/or an MRI be performed. Owens states that he has contacted Defendants Arias, Hawkins, Cain, and other non-defendants with regard to his problems. Nowhere in the grievance are any of the Corrections Defendants named.

Baney also attaches a copy of the Initial Review Response to Owens' grievance, which was issued by S. Showalter, Grievance Coordinator at SCI-Huntingdon, on August 22, 2002. (Id., Ex. A-2.) Showalter interprets the grievance as complaining of both a lack of medical care regarding his complaints prior to surgery, as well as pain he is still suffering post-surgery approximately one year ago. In particular, Owens' concerns regarding metal in his abdomen

⁸ The averments of Owens' complaint are limited to the year 2001. It should also be noted that the averments appear to concern the failure to diagnose a hernia, whereas the grievances appear to concern post-hernia surgery care.

are addressed by Showalter. Owens is advised that in repairing the hernia, coils were used to hold mesh in place, and that such procedure is routine in hernia repair. Showalter also refers to the recent x-rays and ultrasounds performed on Owens and which have come back normal. In addition, Showalter references Owens' recent examination by Dr. Arias, and the fact that Owens has a follow-up appointment in two weeks. Communication with the doctors is encouraged by Showalter, and Owens is advised that he is free to review his medical files.

Following receipt of this response, Owens filed an appeal with Defendant Kyler, Superintendent at SCI-Huntingdon, in accordance with the second step of the DOC grievance procedure. A copy of this appeal is attached to Baney's declaration. (Id., Ex. A-3.) Owens again complains about the lack of medical treatment by the medical department at SCI-Huntingdon and his belief that something was improperly left inside him during surgery. He acknowledges that x-rays have been performed post-surgery, but claims that Dr. Hardesty, who performed the surgery, admitted to him that he had made a mistake during the surgery.⁹ He requests that an MRI be ordered.

On September 23, 2002, Kyler issued a response to Owens' appeal. (Id.) In his

⁹ Hardesty is not named as a defendant in this action. However, on July 17, 2003, Owens filed another civil rights action pursuant to 42 U.S.C. § 1983 in this Court raising inadequate medical care claims against Hardesty and J.C. Blair Hospital. Owens v. Hardesty, et al., Civil Action No. 3:CV-03-1194.

response, Kyler reiterated basically the same information as did Showalter in her response to Owens, and found that the medial staff was making every effort to work with Owens regarding his medical complaints.¹⁰

The Corrections Defendants also submit the declaration of Thomas L. James in support of their contention that Owens' claims are unexhausted. (Dkt. No. 15, Ex. B.) James has held the position of Chief Grievance Coordinator in the Secretary's Office of Inmate Grievances and Appeals since October of 2000. In this position, he processes all grievances appealed to Final Review pursuant to DC-ADM 804 (VI)(D), the final step of the required grievance process. In reviewing the records from January 2001 to the present, James found the following with respect to grievances filed by Owens during the relevant time period which pertain to medical issues:

Owens initiated only one grievance with regard to medical issues, (Grievance # 28444); the grievance was neither properly appealed to Final Review nor accepted for Final Review in the Secretary's Office. In addition to attaching copies of the DOC grievance procedure as set forth in DC-ADM 804, James also attaches the only two documents which exist at the Final Review level regarding Grievance # 28444. The first is a letter dated September 27, 2002, written by

¹⁰ As previously indicated, Owens also attached a copy of these documents to his complaint. (Dkt. No. 1, Supp.)

Owens to Jeffrey Beard, Secretary of the DOC. In this letter, Owens complains that, as of that date, Kyler had failed to respond to the appeal he filed on August 26, 2002. (Id., Ex. 4.) In this letter Owens summarizes the claims he raised in Grievance # 28444, and, for the first time, requests monetary damages in the amount of one million dollars.

The other document contained in the Central Office file is a memo to Owens dated October 4, 2002, from Kristen Reisinger, Assistant Chief Grievance Coordinator in the Secretary's Office of Inmate Grievances and Appeals, in response to his letter to Beard. (Dkt. No. 15, Ex. B-3.) Reisinger informs Owens that his letter to the Central Office is being filed without action in that Superintendent Kyler's failure to respond to his appeal did not entitle Owens to direct appeal to final review. He is advised to contact the Superintendent's Office to ensure they received his appeal.¹¹

The foregoing factual recitation, which is undisputed, shows that only one grievance pertaining to medical issues was ever filed by Owens during the relevant time period. It is also clear that Owens failed to set forth any claims of wrongdoing on the part of any of the Corrections Defendants (Kyler, Williamson, Grace or Beard) who are named in this action. In

¹¹ Owen's letter to Beard complaining about Kyler's failure to respond was dated the same date Kyler actually responded to Owens' appeal – September 23, 2002. (Dkt. No. 15, Ex. B-3, B-4.)

fact, none of these defendants are even mentioned in the grievance. As these Defendants were not named in the only grievance filed by Owens with regard to the instant claims, the instant claims asserted against them have not been exhausted as required by 42 U.S.C. 1997e(a).

The complaint must also be dismissed on the basis of exhaustion against all defendants in that it is clear that Owens never pursued his grievance through the final level of appeal as required by DC-ADM 804(VI)(D). While Owens did forward a letter addressed to Defendant Beard complaining of Kyler's failure to respond to his level 2 appeal, Kristen Reisinger of the Secretary's Office responded to Owens that his letter was being filed without action in that the failure of Kyler to yet respond did not entitle him to pursue his appeal to final review. Further, Owens was even advised to check with Kyler's office to make sure he received his appeal. This, of course, became unnecessary as Kyler had already replied to Owens' appeal, as evidenced by his response dated September 23, 2002. After receiving Kyler's response, Owens failed to then file an appeal to the Secretary's Office, as required by DC-ADM 804. Rather, he chose to file the instant lawsuit.

Because Owens failed to exhaust his available administrative remedies prior to filing this action, his claims are subject to dismissal for failure to exhaust. DC-ADM 804(VI)(D)(1)(e)

specifically provides that an appeal at [the Secretary's Office of Inmate Grievances and Appeals] level may not be permitted until the inmate has complied with all procedures established for Initial Review and Appeal to Facility Manager. Owens failed to do so even after being advised that his letter to Beard was being filed without action and after receiving a response to his level 2 appeal from Kyler. The documents submitted by both Owens and the Defendants in this action clearly establish that the only grievance filed by Owens remotely related to the claims in the complaint were not pursued to the final level of appeal. The claims are therefore unexhausted, and subject to dismissal without prejudice.

There also exists a third reason why the instant complaint is subject to dismissal on the basis of exhaustion. In his grievance, Owens never requested money damages or the equitable relief he seeks in the instant complaint. The Third Circuit, in an unreported decision, has suggested that an inmate may not pursue a claim for monetary relief when such a claim was not pursued administratively. See Geisler v. Hoffman, Civil No. 99-1971, slip op. at 4 (3d Cir. Sept. 12, 2000). Several members of this Court, including the undersigned, relying upon Geisler, have since held that an inmate plaintiff's failure to seek monetary damages in prison grievance proceedings precludes the inmate from seeking such relief in a civil rights action. See Jones v. Burnett, Civil No. 3:CV-01-1624, slip op. at 8-9 (M.D. Pa. May 19, 2003)(Kosik,

J.); Brown v. Poorman, Civil No. 3:CV-98-1180 (M.D. Pa. Sept. 9, 2002)(Munley, J.); Thomas v. Meyers, Civil No. 3:CV 00-1887 (M.D. Pa. March 25, 2002) (Caputo, J.); Chimenti v. Kimber, Civil NO. 3:CV-01-0273, slip op. at 11 (M.D. Pa. March 15, 2002) (Vanaskie, C.J.); Laird v. Pennsylvania Department of Corrections, Civil No. 3:CV-00-1039, slip op. at 3 (M.D. Pa. Sept. 26, 2001) (Nealon, J.).¹²

Owens did not include a request for monetary damages in his administrative grievance. Moreover, he did not request to be seen by a medical specialist with training in internal medicine. Thus, Owens' claims against Defendants for monetary relief, and equitable relief in the form of the appointment of an internal specialist, would appear to be foreclosed as a consequence of his failure to seek such relief through the DOC grievance process. While Owens did request monetary damages in his letter to Defendant Beard, he was advised that this was not an acceptable appeal to final review, and that his letter was being filed without action.

¹² The Court recognizes that two members of this Court have recently rendered decisions reaching the opposite conclusion on this issue. See Rocco v. Kertes, Civil No. 1:CV-01-603 (M.D. Pa. Jan. 16, 2003) (Kane, J.); Woods v. Beard, Civil No. 1:CV-01-2249, slip op. at 7-9 (M.D. Pa. Sept. 3, 2002) (Caldwell, J.). I remain persuaded, however, that a claim is only properly exhausted when the inmate seeks the same type of relief in the administrative process that he seeks in the civil rights action.

B. Motion for Reconsideration of Order Denying Appointment of Counsel

Also pending is Owens' motion seeking reconsideration of the Court's denial of his motion for appointment of counsel on April 2, 2003. (Dkt. No. 25.) In light of the Court's disposition of Defendants' motions to dismiss, this matter is now moot. Even if it were not academic, the Court finds the motion to be without merit for the reasons set forth in the April 2, 2003 Order denying counsel.

CONCLUSION

Since Owens failed to exhaust available administrative remedies, the claims against the Defendants must be dismissed without prejudice pursuant to § 1997e(a). In addition, Owens' motion for reconsideration of the April 2, 2003 Order denying counsel will be denied as moot. An appropriate Order follows.

s/ Thomas I. Vanaskie _____
Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES E. OWENS,

Plaintiff,

vs.

KENNETH KYLER, ET AL.,

Defendants.

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: CIVIL NO. 3:CV-02-1987
:
: (CHIEF JUDGE VANASKIE)
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ORDER

NOW, THIS 22nd DAY OF SEPTEMBER, 2003, for the reasons set forth in the foregoing Memorandum, **IT IS HEREBY ORDERED THAT:**

1. The Doe defendant is dismissed from this action.
2. The motions to dismiss filed by the Defendants in this action (Dkt. Nos. 13, 16 and 18) are **GRANTED** and the claims against them dismissed without prejudice for failure to exhaust administrative remedies.
3. Plaintiff's motion for reconsideration of the Court's denial of counsel (Dkt. No. 25) is **DENIED.**

4. The Clerk of Court is directed to mark this matter **CLOSED**.

s/ Thomas I. Vanaskie _____
Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania