

profile, he was placed on the "special management" track to ensure that he was closely supervised. He alleges that shortly after his arrival at the facility, he notified PPS officials that he was receiving threats from other inmates. Pl.'s Dec. ¶ 12.¹

On July 21, 2003, at approximately 9:30 A.M., the plaintiff was attacked by another detainee, who threw a mixture of boiling water and oil on his face. He was taken to the receiving room to await a medical examination, where he was allegedly interrogated about the attack. At 11:30 A.M., he was seen by a medical officer but given no medicine. Later that day, he was transferred to the Curran-Fromhold Correctional Facility, where he was given a topical cream but no pain medication.

While in the Curran-Fromhold facility, the plaintiff was allegedly attacked twice, once by another inmate, Jose DeJesus, and once by corrections officer Shaune Marshall, who allegedly entered the plaintiff's cell, pepper sprayed him, and dragged him down several stairs.

B. Exhaustion of Administrative Remedies

To air a complaint, the PPS's administrative procedures require an inmate to fill out a grievance form, place it in a collection box or give it to a corrections officer, and retain

¹ A copy of the plaintiff's declaration is attached as Exhibit A to his brief in opposition and is cited herein as "Pl.'s Dec. ¶ ___."

the bottom copy for his or her records. Dep. of Robert Tomaszewski, Pl.'s Br. in Opp. Ex. C at 39-40. If the inmate is incapable of writing a grievance, he can seek help in filling out a form from a corrections officer or a social worker. Id. at 41.

The plaintiff alleges that a copy of these procedures was neither given to him nor posted in the areas in which he was confined. He asserts that he nonetheless attempted to file grievances but that he did not retain copies because he thought that records would be retained by the PPS. Pl.'s Dec. ¶ 8. He also alleges that his father attempted to file grievances about his mistreatment. Id. ¶ 9. There is no record of the plaintiff or his father ever raising complaints on the plaintiff's behalf. Defs.' Br. in Supp. Ex. B.

II. Claims

The plaintiff alleges three violations of his due process rights: (1) failure to protect him from the boiling-water assault and the attack by DeJesus; (2) failure to adequately treat his burns; and (3) excessive force by Shaune Marshall. All three claims are brought against the City of Philadelphia, PPS commissioner Leon King, former deputy commissioner Alan Appeal, former PPS warden Robert Tomaszewski, and warden Arthur Blackmon. The excessive force claim is also asserted against Shaune Marshall.

III. Analysis

On a motion for summary judgment, a court must view the evidence and draw reasonable inferences therefrom in the light most favorable to the party opposing summary judgment. See, e.g., Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Summary judgment is proper if the evidence shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In opposing a motion for summary judgment, a party may not rest upon the allegations in his pleadings, but instead must set forth "specific facts," by affidavit or otherwise, which show that there is a genuine issue for trial. Fed. R. Civ. P. 56(e).

The defendants' motion argues that the plaintiff has failed to exhaust his administrative remedies and that his claims fail as a matter of law. The Court does not reach the latter argument because it agrees that the plaintiff failed to exhaust his administrative remedies before filing this suit.

Under the PLRA, inmates may not file a lawsuit relating to prison conditions until they have exhausted "such administrative remedies as are available." 42 U.S.C. 1997e(a). Failure to exhaust administrative remedies is an affirmative defense that must be proven by the defendants. Brown v. Croak, 312 F.3d 109, 111 (3d Cir. 2002).

The defendants have submitted the affidavit of Charles

Shovlin, director of the PPS's Policy and Audit Division, which states that every inmate grievance is entered into the PPS computer system and that there is no record of the plaintiff ever filing a grievance. Defs.' Br. in Opp. Ex. B. The plaintiff seeks to counter this evidence with his own assertion that he did, in fact, file written grievances. See Pl.'s Dec. ¶ 8. He attests generally that his grievances related to "the issues raised in my Complaint (namely the lack of adequate security and medical care and abuse from prison personnel)." Id.

The plaintiff's bald allegation that he initiated grievance procedures is insufficient to create a triable issue of fact. First, there is no evidence in the record to support the claim (for example, the inmate copy of the grievance form). Second, he has failed to provide any details surrounding the alleged submissions, such as the alleged date of the grievances or the party to whom they were submitted.²

The plaintiff has therefore failed to offer "specific facts" showing that there is a genuine issue for trial. Saldana v. Kmart Corp., 260 F.3d 228, 232 (3d Cir. 2001); Fed. R. Civ. P. 56(e). The generality of the plaintiff's assertion precludes meaningful rebuttal by the defendants. Further, because the plaintiff has not described the substance of his grievances, it

² The plaintiff's declaration occasionally contains such detail, providing, for instance, the date and time of his burns and his medical treatment. See id. ¶¶ 14, 19.

is impossible to tell which claims, if any, might have been properly exhausted. The allegations in his declaration therefore amount to "bare assertions," insufficient to withstand the defendant's motion. See Fireman's Ins. Co. of Newark, N.J. v. DuFresne, 676 F.2d 965, 969 (3d Cir. 1982).

The plaintiff raises several arguments to avoid dismissal on exhaustion grounds: (1) he never received a copy of the inmate handbook, nor was one posted; (2) the practice and policy of the PPS was to accept oral grievances on behalf of inmates who, like the plaintiff, have trouble reading and writing; (3) his father submitted grievances on his behalf; and (4) the practice and policy of the PPS is to allow inmates to give written grievances to corrections officers, in contrast to the official policy, which states that grievances should be placed in lockboxes.

These arguments do not excuse the plaintiff's failure to exhaust administrative remedies. First, he cites no law requiring prison officials to provide inmates with a copy of grievance procedures. Cases suggests that administrative remedies are not "available" when prison officials mislead inmates about the administrative process. See, e.g., Brown, 312 F.3d at 113; Mitchell v. Horn, 318 F.3d 523 (3d Cir. 2003); Camp v. Brennan, 219 F.3d 279 (3d Cir. 2000); Davis v. Berks County, 2007 WL 516128 (E.D. Pa. 2007). No court has held, however, that

administrative remedies are not "available" when prison officials fail to take affirmative steps to inform prisoners of the grievance process. More importantly, the plaintiff never claims that he was unaware of the PPS's policies on grievances. His declaration alleges that PPS officials failed to act when he initiated the grievance process, not that he was ignorant of it.

The plaintiff's second argument also fails. There is no evidence that the PPS has a policy of accepting oral grievances. In the testimony cited by the plaintiff, Warden Tomaszewski says only that others may "help a guy write a grievance," not that an unrecorded oral complaint may suffice. Even if the policy of the PPS was to accept oral grievances, the plaintiff has not alleged that he complained orally about any mistreatment. At oral argument, plaintiff's counsel relied on the plaintiff's assertion that he "notified PPS officials of the threats that were being made against [him]." Pl.'s Dec. ¶ 12. This statement, however, speaks to whether prison officials were warned about a possible attack on the plaintiff before its occurrence, not whether he conveyed a grievance related to the attack after the fact.

The plaintiff's third argument, that his father filed grievances on his behalf, fails for similar reasons. The allegation is devoid of any detail about the timing or substance of his father's alleged complaints. Further, with no allegation

that he was ignorant of the PPS grievance procedures or that the normal grievance channels were impeded, there is no reason to allow his father's alleged complaints to substitute for the ordinary administrative process.

The final argument offered by the plaintiff faults PPS officials for allowing guards to accept written grievances. Warden Blackmon explained that PPS policy allows detainees to give written grievances to prison officials or place them in a lockbox if they want their grievances to remain confidential. Pl.'s Br. in Opp. Ex. B at 72-73. The plaintiff has not explained how this could mislead a detainee about the proper way to file grievances, nor has he asserted that he was, in fact, misled. Consequently, there is no basis to conclude that the normal grievance procedures were not "available," and the PLRA bars the plaintiff's claims for failure to follow these procedures.

An appropriate order follows.

