

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

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TERRANCE RANKINS,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NOI. 98-1669
	:	
CORRECTIONS OFFICER ANDREW	:	
MURPHY, et al.,	:	
Defendants.	:	

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MEMORANDUM

R.F. KELLY, J.

NOVEMBER 3, 1998

Plaintiff, Terrance Rankins ("Rankins"), is a prisoner presently incarcerated at the State Correctional Institution at Mahanoy ("Mahanoy"). Rankins, proceeding pro se, alleges that pursuant to 42 U.S.C. § 1983, his First, Eighth and Fourteenth Amendment rights have been violated. Presently before the Court is Defendants', Superintendent Martin Dragovich, Deputy Superintendent Robert Novotney, Deputy Superintendent Edward Kelm, Superintendent's Assistant Carol Dotter, Lieutenant Jerome Fryzel, Hearing Examiner Kevin Kane, Captain Thomas Temperine, Captain Edward Geroski, Corrections Officer Andrew Murphy ("Murphy"), and Corrections Officer John Klatka, Motion to Dismiss Rankins' Complaint.<sup>1</sup> For the reasons that follow, the

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<sup>1</sup> Two Defendants who are named in Rankins' Amended Complaint, Corrections Officer Gerald Michaels and Mailroom Supervisor Sally Gennrini, have not been served pursuant to Rule 4 of the Federal Rules of Civil Procedure. Over 120 days have passed since Rankins filed his amended complaint, therefore, pursuant to Rule 12(b)(5), all claims against these individuals

Motion is granted.

In bringing this action, Rankins is required to comply with the Prison Litigation Reform Act of 1996 ("PLRA"). 42 U.S.C. § 1997e. The PLRA requires a prisoner to exhaust all administrative remedies prior to bringing suit. 42 U.S.C. § 1997e(a). Additionally, the PLRA provides that a prisoner may not bring a federal civil action without a prior showing of physical injury. 42 U.S.C. § 1997e(e). Rankins has not complied with either of these requirements, therefore, his complaint must be dismissed.

Rankins filed one appeal of a grievance response to final review, however, that appeal was imperfect because Rankins failed to appeal to the Superintendent first, as is required by the Department of Corrections regulations.<sup>2</sup> The PLRA states that: "No 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." 42 U.S.C. § 1997e(a). Rankins has not exhausted his administrative remedies as to any allegation in the

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are dismissed.

<sup>2</sup> Defendants incorporate into their Motion to Dismiss an affidavit from Robert S. Bitner, Chief Hearing Examiner of the Pennsylvania Department of Corrections, for the limited purpose of documenting Rankins administrative filings within the prison system. Defs.' Mot. to Dismiss Ex. A.

complaint, for this reason, it must be dismissed. Pedraza v. Ryan, 18 F.3d 288 (5th Cir. 1990); Rocky v. Vittorie, 813 F.2d 734 (5th Cir. 1987); see Jenkins v. Morton, 148 F.3d 257, 259 (3d Cir. 1998).

Rankins has also failed to allege that he suffered any physical injury as a result of the actions taken by Defendants. While Rankins does state that he was assaulted by Murphy, he does not state what physical injury, if any, resulted from this assault. The PLRA states that: "No federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e). For this reason, Rankins' complaint must be dismissed. Brown v. Toombs, 139 F.3d 1102, 1103-04 (6th Cir. 1998) (per curiam), cert. denied, \_\_\_ U.S. \_\_\_, 67 USLW 3231 (Oct. 5, 1998); White v. McGinnis, 131 F.3d 593, 595 (6th Cir. 1997); Alexander S. v. Boyd, 113 F.3d 1373, 1380 (4th Cir.1997), cert. denied, 118 S.Ct. 880 (1998); Siqlar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997; Warcloud v. Horn, No. 97-3657 1998 WL 255578, \*2 (E.D. Pa. May 20, 1998); Wilson v. Shannon, 982 F. Supp. 337, 340 n.2 (E.D. Pa. 1997); Nieves v. Dragovich, No. 96-6525, 1997 WL 698490, at \*3 n.2 (E.D. Pa. Nov. 3, 1997); Davage v. United States, No. 97-1002, 1997 WL 180336, at \*5 (E.D. Pa. April 16, 1997).

An Order follows.

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Defendants.	:	

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ORDER

AND NOW, this 3rd day of November, 1997, upon consideration of Defendants' Motion to Dismiss, and Plaintiff's Response thereto, it is hereby ORDERED that said Motion is GRANTED. Plaintiff's Complaint is DISMISSED. The Clerk's Office shall mark this case CLOSED.

BY THE COURT:

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Robert F. Kelly, J.