

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Tyrone Williams,)	
)	
)	
<i>Plaintiff,</i>)	
)	No. 20-cv-5639
-vs-)	
)	
Sheriff Dart, et al.,)	<i>(Judge Pacold)</i>
)	
)	
<i>Defendants.</i>)	

**PLAINTIFF'S MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT**

Defendants have moved for summary judgment on the affirmative defense of failure to exhaust.¹ The Court should deny this motion because plaintiff has exhausted his grievance remedies.

I. Facts

Before filing this complaint, plaintiff filed a grievance, No. 2020-11437, that stated in pertinent part as follows:

I have stage four prostate cancer. I am 58 years of age and I am currently housed in division 6 Tier 1R with a cell mate. I am high risk for Covid-19. Courts ordered Thomas J. Dart to practice social distance between inmates pre-trial detainees and he has violated that order as well as my constitutional rights.

(Plaintiff's Additional Facts, ¶ 1.)

¹ Dismissal without prejudice is the appropriate order in a case where the prisoner has failed to exhaust administrative remedies. *Ford v. Johnson*, 362 F.3d 395, 401 (7th Cir. 2004).

The CCDOC denied grievance No. 2020-11437, on September 10, 2020, stating that “CCDOC has followed all guidelines for COVID-19 as provided by the state.” (Plaintiff’s Additional Facts, ¶ 2.) Plaintiff timely appealed the denial of grievance No. 2020-11437 on September 17, 2020, and the CCDOC denied the appeal on September 28, 2020. (Plaintiff’s Additional Facts, ¶ 3, 4.)

II. Argument

The Prison Litigation Reform Act of 1995 requires in 42 U.S.C. § 1997e(a) that a person in custody must exhaust grievance remedies in order to prosecute an action with respect to prison conditions. Plaintiff exhausted administrative remedies on September 28, 2020, when the Cook County Department of Corrections denied his appeal in grievance No. 2020-11437.

In grievance No. 2020-11437, plaintiff asserted that the defendant Dart was not following guidelines to prevent the spread of COVID-19. These are precisely the allegations plaintiff raises in the operative complaint, ECF No. 76. As required by the PLRA, grievance No. 2020-11437 provided notice to defendant of “the nature of the wrong for which redress is sought.” *Strong v. David*, 297 F.3d 646, 650 (7th Cir. 2002).

Defendants include a copy of grievance No. 2020-11437 in the documents they submitted in support of summary judgment (ECF No. 88-3 at 13-14) but otherwise ignore that grievance. A litigant moving for summary judgment may not ignore facts that are favorable to its opponent. *Gonzalez-Sevin v. Ford Motor Co.*,

662 F.3d 931, 935 (7th Cir. 2011). Defendants' motion for summary judgment should therefore be denied.

Respectfully submitted,

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC No. 08830399
Joel A. Flaxman
200 South Michigan Ave Ste 201
Chicago, Illinois 60604
(312) 427-3200
Attorneys for Plaintiffs