

United States Court of Appeals
For the Eighth Circuit

No. 13-1759

Floyd Dell Johnson,

Plaintiff - Appellant,

v.

Charlie Crockett, Sgt., Maximum Security Unit, ADC; Billy Straughn, Warden, Maximum Security Unit, ADC; S. Outlaw, Deputy Warden, Maximum Security Unit, ADC; Ray Hobbs, Director, Arkansas Department of Correction,

Defendants - Appellees.

Appeal from United States District Court
for the Eastern District of Arkansas - Pine Bluff

Submitted: October 7, 2013
Filed: November 14, 2013
[Unpublished]

Before MURPHY, COLLTON, and GRUENDER, Circuit Judges.

PER CURIAM.

Arkansas Department of Correction inmate Floyd Johnson appeals the district court's¹ dismissal without prejudice of his 42 U.S.C. § 1983 action, for failure to exhaust administrative remedies.

Upon careful de novo review, see King v. Iowa Dep't of Corr., 598 F.3d 1051, 1052 (8th Cir. 2010), we agree that, based on the evidence before the district court, dismissal for failure to exhaust administrative remedies was proper. See 42 U.S.C. § 1997e(a) (no action shall be brought with respect to prison conditions under § 1983 by prisoner until available administrative remedies are exhausted); Jones v. Bock, 549 U.S. 199, 211, 218 (2007) (prison's administrative exhaustion requirements govern whether exhaustion has occurred; unexhausted claims cannot be brought into court or considered). Johnson has submitted additional evidence on appeal, contending that it shows exhaustion, but such evidence was not before the district court, so we will not consider it. See Dakota Indus., Inc. v. Dakota Sportswear, Inc., 988 F.2d 61, 63 (8th Cir. 1993). Because the dismissal was without prejudice, we note Johnson is free to refile his complaint in the district court, see Schafer v. Moore, 46 F.3d 43, 45 (8th Cir. 1995) (per curiam) (dismissal without prejudice permits plaintiff to refile complaint), where he may submit his additional evidence of exhaustion.

Accordingly, we affirm. See 8th Cir. R. 47B.

¹The Honorable Susan Webber Wright, United States District Judge for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable Beth Deere, United States Magistrate Judge for the Eastern District of Arkansas.