

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**CHARLES H. SIMMONS,
ADC #135731**

PLAINTIFF

V.

CASE NO. 3:20-CV-138-DPM-BD

RICKY DAVIS, *et al.*

DEFENDANTS

ORDER

On September 17, 2020, Defendants moved for summary judgment on all pending claims, contending that Mr. Simmons failed to fully exhaust his administrative remedies before filing suit. (Doc. No 32) On October 8, 2020, the Court recommended that Defendants' motion be GRANTED, in part. The Court recommended dismissal of all claims except the deliberate-indifference claim against Defendant Davis. (Doc. No. 42)

Defendants have now moved for leave to file an amended motion for summary judgment to address Mr. Simmons's failure to file a grievance regarding Defendant Davis's alleged deliberate indifference to his medical needs. (Doc. No. 43) The motion is GRANTED. The Clerk is directed to file the attachment to the motion (Doc. No. 43-1) as Defendant Davis's supplemental motion for summary judgment.

Mr. Simmons may file a response opposing Defendant Davis's motion for summary judgment if he wishes. To be considered, the response must be filed within 14 days of this Order. In opposing the motion for summary judgment, Mr. Simmons may attach affidavits that he or others have signed. Because affidavits are sworn statements, they must be either notarized or declared under penalty of perjury. See 28 U.S.C. § 1746.

Unsworn statements will not be considered in deciding the motion for summary judgment. And to be considered, an affidavit must be based on the personal knowledge of the person who signs it.

The motion for summary judgment concerns only whether Mr. Simmons fully exhausted the grievance process with regard to his deliberate-indifference claim against Defendant Davis. His response to the motion, therefore, should address only that issue—that is, whether he exhausted his administrative remedies regarding this claim before May 20, 2020 (the date the complaint was filed) and, if not, whether there was a valid reason why he did not.

IT IS SO ORDERED, this 14th day of October, 2020.


UNITED STATES MAGISTRATE JUDGE