

any federal law until the prisoner has exhausted all "administrative remedies as are available," as follows:

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.

Alexander v. Hawk, 159 F.3d 1321, 1324 (11th Cir. 1998).

Plaintiff filed an informal and formal grievance. However, plaintiff admitted that he did not appeal the denial of his formal grievance. (Plaint. Depo doc. 20, pp.40-45). The grievance procedure in effect at the Mitchell County Correctional Institute during plaintiff's incarceration consisted of three steps: the filing of an informal grievance; the filing of a formal grievance; an appeal to the Department of Corrections. (Depo. of Plaintiff, doc. 20, pp. 28-29; Affidavit of Fisher, doc. 21, ¶ 5.). Plaintiff did file both an informal grievance and a formal grievance, but he then dismissed his grievance, and never pursued the third step of an appeal. (Depo. of Plaintiff, doc. 20, pp. 40-41; Affidavit of Fisher, doc. 21, ¶¶ 4-5.)

Plaintiff has not satisfied the exhaustion requirement of § 42 U.S.C. 1997(e). The clear mandate of Alexander v. Hawk is that a prisoner must exhaust the remedies available under an administrative remedy program before filing an action such as this. Given these circumstances, the undersigned believes that dismissal is mandated for failure to exhaust administrative remedies.

The court must follow the dictates of circuit law. This circuit, in interpreting the PLRA, has determined that exhaustion is now a pre-condition to suit, and the courts can no longer simply waive those requirements where it is determined the remedies are futile or inadequate. Alexander v. Hawk, 159 F.3d 1321, 1326 (11th Cir. 1998); Harper v. Jenkin, supra.

Accordingly, it is the RECOMMENDATION of the undersigned that defendant's motion for

summary judgment be **GRANTED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

SO RECOMMENDED, this 20th day of May, 2009.

//S Richard L. Hodge
RICHARD L. HODGE
UNITED STATES MAGISTRATE JUDGE

msd