

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FRANK EDWARDS,)
)
Plaintiff,)
)
v.)
)
SALVADOR GODINEZ, JAMES JOHNSON,)
C/O KYLE MASSEY, C/O JOHN MOHR,)
and C/O TONY STONER,)
)
Defendants.)

Case No. 3:14-cv-1363-DGW

MEMORANDUM AND ORDER

WILKERSON, Magistrate Judge:

Plaintiff Frank Edwards¹ is an inmate in the custody of the Illinois Department of Corrections currently incarcerated at Lawrence Correctional Center. Plaintiff brings this action pursuant to 42 U.S.C. §1983 alleging she was sexually assaulted at Big Muddy Correctional Center (“Big Muddy”) on September 19, 2014. Defendants filed a motion for summary judgment on May 27, 2015 asserting Plaintiff filed this lawsuit prior to exhausting his administrative remedies (Doc. 26) and the Court held a hearing on said motion on August 31, 2015 (*see* Doc. 41). After being fully briefed on the issues and hearing oral arguments, the undersigned issued a Report and Recommendation recommending that District Judge Nancy J. Rosenstengel grant Defendants’ motion for summary judgment, find that Plaintiff did not exhaust her administrative remedies prior to filing this lawsuit, and dismiss this lawsuit without prejudice. Plaintiff timely filed objections to the undersigned’s Report and Recommendation on October 19, 2015 (Doc. 46). On November

¹ As explained in Judge Rosenstengel’s Referral Order (Doc. 8), Plaintiff’s legal name is Frank Edwards; however, he claims to be a transgender inmate who prefers to be called Tracey Edwards. Although the Court must use Plaintiff’s legal name, feminine pronouns will be used to reference Plaintiff Edwards.

2, 2015, the final consent to proceed before the undersigned to conduct all proceedings in this matter was received and it was properly referred to this Court on November 6, 2015.

Accordingly, the undersigned's Report and Recommendation (Doc. 44) is converted to an Order of the Court and the attendant objection filed by Plaintiff (Doc. 46) is construed as a Motion to Reconsider. In asking the Court to reconsider its ruling, Plaintiff asserts that she attempted to fully exhaust her administrative grievances, but was thwarted. In particular, Plaintiff takes issue with the Court's finding that she did not attempt to file a grievance on September 20, 2014. Plaintiff attempts to refute the Court's finding that "there is no competent, corroborating evidence that Plaintiff submitted a grievance on September 20, 2014" by pointing to her November 14, 2014 grievance. Plaintiff asserts that this grievance evidences the fact that she attempted to file a grievance on September 20, 2014 in that it references an internal affairs investigation on September 20, 2014 and inquires as to why a previous grievance has not been returned. The Court has reviewed the November 14, 2014 and finds that it does not provide the corroborating evidence Plaintiff believes it does. Specifically, this grievance references Plaintiff's October 24, 2014 grievance and indicates she had not received a response. The only mention of September 20, 2014 was in reference to an internal affairs investigation, not a grievance.

Upon review of Plaintiff's Motion to Reconsider, as well as the undersigned's converted Order, the Court finds that Plaintiff failed to exhaust her administrative remedies prior to filing suit. Accordingly, Plaintiff's Motion to Reconsider (Doc. 46) is **DENIED** and Defendants' Motion for Summary Judgment (Doc. 26) is **GRANTED**. This case is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust administrative remedies and any pending motions are hereby **MOOT**. The Clerk of Court is **DIRECTED** to enter judgment in favor of Defendants and against Plaintiff, and close this case on the Court's docket.

IT IS SO ORDERED.

DATED: February 22, 2016



DONALD G. WILKERSON
United States Magistrate Judge