

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

KEITH CLEVELAND,

Plaintiff,

v.

WARDEN, et al.,

Defendants.

CAUSE NO.: 3:19-CV-550-JD-MGG

OPINION AND ORDER

Keith Cleveland, a prisoner without a lawyer, initiated this case by signing and mailing a complaint on July 5, 2019 (ECF 1 at 4), complaining of an incident that occurred the previous day. "A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quotation marks and citations omitted). Nevertheless, pursuant to 28 U.S.C. § 1915A, the court must review the merits of a prisoner complaint and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.

Here, Cleveland is suing five defendants because he was unhappy with his treatment at the Indiana State Prison on July 4, 2019. His sleeping mat was taken from him, officers took his lunch tray before he was done, and his toilet overflowed but was not timely attended to. His medication was delayed, and he requested but was denied

an x-ray of his neck. He seeks both monetary damages and injunctive relief. Cleveland acknowledges that his claims were grievable, and indicates that he filed a grievance but that he had not received a response at the time he filed his complaint. He explains in both his complaint and amended complaint that he's "just sick of them doing these thing[s] so I wrote this complaint soon as it happened." (ECF 1 at 4; ECF 5 at 5.)

Prisoners are prohibited from bringing an action in federal court with respect to prison conditions "until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Even when a prisoner "seeks relief not available in grievance proceedings, notably money damages, exhaustion is a prerequisite to suit." *Porter v. Nussle*, 534 U.S. at 524, citing *Booth v. Churner*, 532 U.S. at 741.

The PLRA provides that "[n]o action shall be brought with respect to prison conditions under section 1983 . . . until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Exhaustion is necessary even if the prisoner is requesting relief that the relevant administrative review board has no power to grant, such as monetary damages, or if the prisoner believes that exhaustion is futile.

*Dole v. Chandler*, 438 F.3d 804, 808-809 (7th Cir. 2006) (citations omitted). The Seventh Circuit held in *Dole* that a prisoner must file a grievance because responding to his grievance might satisfy him and avoid litigation or the grievance could "alert prison authorities to an ongoing problem that they can correct." *Id.* at 809, citing *Porter v. Nussle*, 534 U.S. at 525.

"Failure to exhaust is an affirmative defense that a defendant has the burden of proving." *King v. McCarty*, 781 F.3d 889, 893 (7th Cir. 2015). Nevertheless, "a plaintiff can plead himself out of court. If he alleges facts that show he isn't entitled to a

