

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

CIVIL ACTION NO. 3:13-CV-529-H

BARRY E. COOLEY

PLAINTIFF

v.

CORRECTIONS OFFICERS JOSH GARRETT AND  
JEFFREY HOMMRICH

DEFENDANTS

**MEMORANDUM OPINION AND ORDER**

This case involves allegations by an inmate at the Louisville Metro Department of Corrections facility that the two Defendants used excessive force against him on or about April 8, 2013. Defendants have now moved for summary judgment on the grounds that Plaintiff has failed to exhaust his required administrative remedies. 42 U.S.C. § 1997(e)(a). In response, Plaintiff has filed a form dated April 18, 2013, which contains the substance of his grievance regarding the use of force which occurred ten days earlier.

The Louisville Metro Department of Corrections has an established grievance procedure for use by all inmates. That procedure and policy sets forth rules for filing grievances, more specifically that a grievance must be filed within five days of the incident in question. Here, Plaintiff clearly did not comply with that part of the regulation. When Plaintiff's grievance was rejected by Defendants as untimely because it was not filed within the prescribed time period, his claim was not "properly exhausted for purpose of filing a Section 1983 claim in federal court." *Woodford v. Ngo*, 548 U.S. 81 (2006); *Siggers v. Campbell*, 652 F.3d 681, 692 (6<sup>th</sup> Cir. 2011). This case and others have also upheld grievance deadlines of five to ten days. Plaintiff does not allege a continuing violation of any kind.

Consequently, it appears that Defendants are correct and that Plaintiff's failure to

properly exhaust his administrative grievance procedures require dismissal of this case.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Defendants' motion for summary judgment is SUSTAINED and Plaintiff's complaint is DISMISSED WITH PREJUDICE.

This is a final and appealable order.

June 17, 2014

A handwritten signature in black ink, appearing to read "John G. Heyburn II", is written over a circular official seal of the U.S. District Court.

**John G. Heyburn II**  
Senior Judge, U.S. District Court

cc: Barry E. Cooley, *Pro Se*  
Counsel of Record