

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

PONTELL BRYANT,

Plaintiff,

v.

S/C.O. G. JACKSON, et al.,

Defendants.

HONORABLE JEROME B. SIMANDLE

Civil Action
No. 13-2823 (JBS-AMD)

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants Bagliani and Rivera's motion for summary judgment. (Docket Entry 49).

1. Defendants assert summary judgment is warranted on Plaintiff Pontell Bryant's excessive force claim because he failed to exhaust his administrative remedies. In support of their motion, Defendants submitted numerous institutional remedy forms, none of which reference the assault alleged in the complaint. (See, e.g., Docket Entries 49-3, 49-4, 49-5, and 49-6).

2. Plaintiff filed a brief in opposition stating that he did submit a remedy form regarding the assault and was interviewed by the Special Investigations Division ("SID") on two occasions. (See Docket Entry 53 at 1).

3. By Order and Memorandum Opinion date July 16, 2015, this Court dismissed Defendant Higbee and Herman's motion for summary judgment, (Docket Entries 55 and 56), which was made on

the same factual record as the present motion for summary judgment filed by Defendants Bagliani and Rivera. (See generally Docket Entry 35).

4. In its July 16 Order and Memorandum Opinion, this Court determined there was a question of fact as to whether Plaintiff substantially complied with the administrative remedy system, and that it was premature to decide the exhaustion issue until the parties have had the opportunity to obtain discovery regarding the alleged assault claim including the interviews of plaintiff. (See Docket Entry 55 ¶ 8).

5. The Court dismissed the summary judgment motion without prejudice to renewal after the relevant discovery has been exchanged, which is to take place within 30 days of the Court's Order. (See Docket Entry 55 ¶ 8).

6. By letter dated July 21, 2015, Defendants Bagliani and Rivera indicated to the Court that they would withdraw their summary judgment motion, Docket Entry 49, without prejudice to their right to renew the motion after the relevant discovery has been exchanged. (Docket Entry 57).

THEREFORE, it is on this 11th day of August, 2015;

ORDERED that Defendants Bagliani and Rivera's motion for summary judgment (Docket Entry 49) is **WITHDRAWN** without prejudice to renewal; and it is further;

ORDERED that Defendants shall provide to Plaintiff, in compliance with this Court's July 16, 2015 Order, any and all evidence (such as notes, documents, and records) that is in the possession or control of South Woods State Prison and/or the Special Investigation Division regarding Plaintiff's allegation of the use of excessive force on June 12, 2013 and any investigation undertaken in response thereto; such evidence may redact sensitive information such as any informant's identity, confidential investigative techniques, confidential personnel information, and the like; and it is finally

ORDERED that the Clerk shall serve a copy of this Order upon Plaintiff by regular mail.

s/ Jerome B. Simandle
JEROME B. SIMANDLE
Chief U.S. District Judge