

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 14, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. **99-0966**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. ANTHONY MERIWETHER,

PLAINTIFF-APPELLANT,

v.

**FRED MELINDEZ, PAROLE COMMISSION, AND WARDEN OF
THOMPSON CORRECTIONAL CENTER (JANE DOE),**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
RICHARD J. CALLAWAY, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. Anthony Meriwether appeals a circuit court order dismissing his combined action for damages against the warden of the Thompson Correctional Center and petition for certiorari review of an adverse parole

determination. We conclude the trial court properly dismissed the joint complaint and petition under § 802.05(3)(b)4, STATS.

¶2 Broadly construed, Meriwether's complaint alleged that his placement in temporary lockup, the loss of numerous items of his personal property while he was in segregation, and the lack of response from the warden to his series of inmate complaints and requests for assistance while he was in segregation all violated institutional policies and procedures, constituted cruel and unusual punishment, and denied him due process of law, entitling him to damages under state law and/or 42 U.S.C. § 1983. Meriwether's petition further alleged that the parole board had failed to properly evaluate his situation and history and to seek a reasonable solution such as placement in the ATTIC residential program prior to denying him parole.

¶3 The respondents point out that Meriwether's complaint failed to allege what, if any, avenues of administrative relief he pursued prior to filing the present action.¹ The failure to allege exhaustion of administrative remedies is fatal to a complaint in those instances where exhaustion of administrative remedies is a prerequisite to suit. *State ex rel. Braun v. Krenke*, 146 Wis.2d 31, 39, 429 N.W.2d 114, 118 (Ct. App. 1988). Section 801.02(7), STATS., bars a prisoner from initiating a civil action against any department of corrections employee until

¹ The record does contain copies of inmate complaints dated May 30, 1998 and June 26, 1998, challenging, respectively, the lack of response to Meriwether's requests for assistance and the loss of his property while in segregation. There is also an acknowledgement from the corrections complaint examiner that Meriwether had appealed both matters on August 17, 1998. It appears, however, that the appeal was untimely, since the warden's decision was issued on July 21, 1998, and WIS. ADM. CODE § DOC 310.13(1) requires appeals to be made within ten calendar days.

all administrative remedies have been exhausted.² Therefore, Meriwether's complaint fails to state a claim upon which relief could be granted under state law.

¶4 Prior Wisconsin case law held an inmate did not need to exhaust his administrative remedies prior to bringing a federal claim under 42 U.S.C. § 1983 in a Wisconsin state court, because this state's inmate complaint review system did not comport with federal certification standards then in effect. *See Casteel v. Vaade*, 167 Wis.2d 1, 20-21, 481 N.W.2d 476, 484 (1992). However, Congress has since eliminated the requirement that state administrative remedies must conform to federal standards. *See* Prison Litigation Reform Act of 1996 § 803(d), Pub. L. No. 104-131, § 101 (eff. April 26, 1996). 42 U.S.C. § 1997e(a) now states an unconditional requirement that prisoners exhaust all available administrative remedies prior to bringing § 1983 claims. Meriwether's failure to allege the exhaustion of his administrative remedies is therefore fatal to his federal claim, as well as his state claim.

¶5 Finally, the trial court correctly noted that Meriwether's certiorari petition was filed more than forty-five days after the parole determination, making it untimely. *See* § 893.735, STATS. Thus, the certiorari petition was also properly dismissed.

² The Wisconsin Administrative Code establishes an Inmate Complaint Review System (ICRS) to afford inmates "a process by which grievances may be expeditiously raised, investigated, and decided." WIS. ADM. CODE § DOC 310.01(1). Under the system, an inmate may file a complaint with the institution complaint examiner, who will investigate the complaint and make a recommendation to the appropriate reviewing authority. *See* WIS. ADM. CODE §§ DOC 310.09 and 310.11. The inmate may appeal an adverse determination to the corrections complaint examiner, who will review the relevant documents and conduct such further investigation as may be necessary, then make a recommendation to the secretary of the department of corrections. *See* WIS. ADM. CODE § DOC 310.13. An inmate must wait to obtain the secretary's decision before pursuing any judicial remedy. *See* WIS. ADM. CODE § DOC 310.04.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

