COURT OF APPEALS
DECISION
DATED AND FILED

August 28, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-0368

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

LEE KNOWLIN,

PLAINTIFF-APPELLANT,

V.

DIRECTOR, OFFICE OF OFFENDER CLASSIFICATION, DARNELL ALRICH, SPECIALIST, KETTLE MORAINE CORRECTIONAL INSTITUTION, POTTS, PROGRAM REVIEW COMMITTEE, DODGE CORRECTIONAL INSTITUTION, AND ROSIE M. ECKHOFF, PROGRAM REVIEW COMMITTEE, KETTLE MORAINE CORRECTIONAL INSTITUTION,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: PAUL B. HIGGINBOTHAM, Judge. *Affirmed.*

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

DEININGER, J. Lee Knowlin, an inmate at the Kettle Moraine Correctional Institute (KMCI), appeals an order dismissing his 42 U.S.C. § 1983

action against several employees of the state Department of Corrections (DOC). Knowlin's complaint alleges the infringement of his constitutional rights along with various state law violations stemming from the conditions for participation in an inmate alcohol and other drug abuse (AODA) program. The trial court dismissed the action because Knowlin failed to exhaust administrative remedies as required under 42 U.S.C. § 1997e(a) and § 801.02(7), STATS. We affirm.

BACKGROUND

In 1994, the Program Review Committee at KMCI recommended that Knowlin participate in the NEXUS AODA treatment program. NEXUS AODA is a voluntary sixteen-week program covering various topics, including alcohol and drug abuse, anger management, behavior therapy, relapse prevention and job seeking skills. Eligibility for participation in the program is conditioned upon an inmate signing the NEXUS AODA program contract.

Knowlin objects to the contract requirements on numerous grounds. He complains that the contract improperly imposes limits on weekly visits with family members, limits his ability to maintain his Islamic religious practices, and requires him to waive certain due process rights. He alleges that the eligibility requirements violate his rights under the First and Fourteenth Amendments of the U.S. Constitution and various provisions of the Wisconsin Constitution and Administrative Code. In his complaint, Knowlin requests compensatory and punitive damages, a declaratory judgment and injunctive relief.

The defendant DOC employees (the State) moved to dismiss Knowlin's action for failure to exhaust administrative remedies as required by federal and state statutes. In support, the State filed the affidavit of the Corrections Complaint Examiner, who is employed by the Department of Justice

and designated to investigate inmate complaints appealed to the DOC Secretary. *See* WIS. ADM. CODE §§ DOC 310.015(3) and 310.09. The examiner avers that he has no record of an appeal from Knowlin regarding the matters raised in Knowlin's complaint in this action. The trial court granted the State's motion and entered an order dismissing this action. From that order, Knowlin appeals.

ANALYSIS

A motion to dismiss tests the legal sufficiency of the complaint. It raises a question of law that we decide de novo. ***Irby v. Macht***, 184 Wis.2d 831, 836, 522 N.W.2d 9, 11, *cert. denied*, 513 U.S. 1022 (1994). Judicial relief is generally denied unless parties have exhausted available administrative remedies. ***Nodell Inv. Corp. v. City of Glendale,*** 78 Wis.2d 416, 424-25, 254 N.W.2d 310, 315-16 (1977). The exhaustion of administrative remedies doctrine

> provides state agencies with the opportunity to correct their own errors and prevents premature judicial incursions into agency activities. In addition, the doctrine of exhaustion promotes judicial efficiency. Conflicts often are resolved without resort to litigation.

Kramer v. Horton, 128 Wis.2d 404, 418, 383 N.W.2d 54, 59, *cert. denied*, 479 U.S. 918 (1986).[1]

[1] In ***Casteel v. Vaade***, 167 Wis.2d 1, 5, 17, 481 N.W.2d 476, 477, 483 (1991), the Wisconsin Supreme Court held that § 1983 plaintiffs were not required to exhaust state administrative remedies as a prerequisite to § 1983 actions brought in state court because Wisconsin's Inmate Complaint Review System (ICRS) did not comply with federal standards.

However, the Prison Litigation Reform Act, enacted April 26, 1996, requires exhaustion of administrative remedies regardless of whether such remedies provided by the state comply with federal standards. Pub. L. No. 104-134, 110 Stat. 1321-71 (codified as amended at 42 U.S.C. § 1997e (1996)). *See* ***Santiago v. Ware***, 205 Wis.2d 292, 321 n.17, 556 N.W.2d 356, 367 (Ct. App. 1996); *cert. denied*, 117 S. Ct. 2435 (1997).

Recent state and federal legislation has specifically directed the application of the administrative remedies exhaustion doctrine to litigation brought by prison inmates. For actions brought under 42 U.S.C. § 1983, the U.S. Code provides:

> No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. § 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a). With respect to state law claims, the Wisconsin statute provides:

> No prisoner, as defined in s. 301.01(2), may commence a civil action or special proceeding against an officer, employe or agent of the department of corrections in his or her official capacity or as an individual for acts or omissions committed while carrying out his or her duties as an officer, employe or agent or while acting within the scope of his or her office, employment or agency until the person has exhausted any administrative remedies that the department of corrections has promulgated by rule.

Section 801.02(7), STATS.

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 Inmate Complaint Investigator, who attempts to resolve the complaint and subsequently makes a recommendation to the institution superintendent. WIS. ADM. CODE § DOC 310.025(1)—(3). An inmate may appeal an adverse decision by the superintendent to an independent Corrections Complaint Examiner, who

then investigates the matter and makes a recommendation to the Secretary of DOC. WIS. ADM. CODE § DOC 310.025(4)—(7).

Knowlin's complaint does not allege, nor is there anything in the record showing, that Knowlin pursued his complaints about the NEXUS contract requirements through the ICRS. Knowlin claims the trial court erred in dismissing his complaint, however, because his challenge is to the adverse effect upon his security classification and institution placement caused by his refusal to participate in the voluntary NEXUS program. We disagree.

We acknowledge that neither security classifications nor institutional placements are reviewable under the ICRS, but both matters may be reviewed administratively via a Program Review Committee (PRC) procedure.[2] *See* ***State ex rel. Staples v. DHSS,*** 136 Wis.2d 487, 498-99, 402 N.W.2d 369, 375 (Ct. App. 1987); WIS. ADM. CODE §§ DOC 310.04(2)(b); 302.18; and 302.19. The proper procedure to obtain court review of final administrative determinations regarding placement and classification is by certiorari. ***State ex rel. Lomax v. Leik,*** 154 Wis.2d 735, 739, 454 N.W.2d 18, 20 (Ct. App. 1990). As noted, Knowlin seeks money damages, a declaratory judgment and injunctive relief. Nowhere in his complaint does he request relief consistent with certiorari review.

Knowlin's complaint is not directed at the actions of the PRC, but at the requirements for entry into the NEXUS program. The entire premise of

[2] It is unclear from the record whether Knowlin timely followed procedures for appealing PRC actions. The record contains copies of incomplete requests for PRC review that Knowlin claims to have filed in August 1996. The only document in the record indicating that Knowlin actually used the administrative appeal process to review his custody classification and institution placement is an "Office of Offender Classification Response," dated December 4, 1996, which is after he filed this action. The response indicates that the office of offender classification has "no record of a PRC appeal from August 1996."

Knowlin's complaint is that the contract requirements of the NEXUS program are onerous, illegal, and unconstitutional. Even though NEXUS is a voluntary program, and Knowlin has chosen not to enter into it, the ICRS is available to Knowlin to address his concerns. The ICRS permits an inmate "to seek a change of *any* institutional policy or practice," except for certain matters not relevant to the present discussion. WIS. ADM. CODE § DOC 310.04(2) (emphasis supplied). "Civil rights complaints" may also be filed in the ICRS. *See* ***id.,*** § 310.04(5). Thus, we conclude that Knowlin failed to exhaust administrative remedies "as are available" to him, 42 U.S.C. § 1997e(a), and which the DOC "has promulgated by rule." Section 801.02(7), STATS.

Accordingly, we affirm the order dismissing Knowlin's complaint for failure to exhaust administrative remedies.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.