

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ELTON LEROY PUMPHREY, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 03-184-KAJ  
 )  
 GUY BAULL, )  
 )  
 Defendant. )  
 )

**MEMORANDUM ORDER**

I. INTRODUCTION

Presently before the court is Lieutenant Guy Baull’s (“Defendant”) Motion to Dismiss the Complaint (Docket Item [“D.I.”] 15; the “Motion”) filed by Elton Leroy Pumphrey (“Plaintiff”). For the reasons that follow, Defendant’s Motion is granted.

II. BACKGROUND

Plaintiff is a *pro se* litigant currently incarcerated at the Delaware Correctional Center (“DCC”) in Smyrna, Delaware. (D.I. 16.) On February 6, 2003, Plaintiff commenced this action by filing a Complaint under the Civil Rights Act, 42 U.S.C. §1983, alleging that Defendant, a Correctional Officer, violated Plaintiff’s Eighth and Fourteenth Amendment rights under the Constitution. (D.I. 2.)

Plaintiff’s allegations stem from an incident that occurred while Plaintiff was incarcerated at the Sussex Correctional Institution (“SCI”) in Georgetown, Delaware. (See *id.*) On the morning of October 24, 2002, Defendant, then employed by SCI, escorted Plaintiff outside to a designated area within SCI. (D.I. 2 at 3; D.I. 16 at A-2.) Once outside, Defendant shackled Plaintiff’s ankles and ordered Plaintiff, as a form of

punishment, to “roll a log” approximately three feet in diameter. (*Id.*) Plaintiff refused to follow Defendant’s order due to an injury to his left knee. (D.I. 2 at 3.) Defendant then stated that he would check with SCI’s medical office to confirm whether Plaintiff had a knee injury. (*Id.*) Once he found out that there was no record of an injury to Plaintiff’s knee, Defendant again ordered Plaintiff to “roll a log.” (*Id.*) Plaintiff again refused, claiming that he was unable to do so. (*Id.*) Defendant then pepper sprayed Plaintiff because of his refusal. (*Id.*)

As a result of this incident, Plaintiff filled out a grievance and placed it in SCI’s grievance box. (*Id.*) However, there was no response to the grievance. (*Id.*) Plaintiff then commenced this suit alleging that Defendant’s actions constituted assault and, therefore, violated Plaintiff’s Eight Amendment right to be free from cruel and unusual punishment. (*Id.*)

On August 12, 2003, Defendant filed this Motion for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 15.) In support of the Motion, Defendant argues that Plaintiff has failed to exhaust his administrative remedies and thus the Complaint must be dismissed pursuant to the Prison Litigation Reform Act (“PLRA”), 42 U.S.C. §1997e.<sup>1</sup> (D.I. 16 at 3.)

### III. STANDARD OF REVIEW

In deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the factual allegations contained in the Complaint must be accepted as true. *Cruz v. Beto*, 405 U.S. 319, 322 (1972) (*per curiam*). This is especially true where, as

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<sup>1</sup> Defendant also asserts the defenses of sovereign immunity, immunity under the state tort claims act, qualified immunity, and immunity under the Eleventh Amendment. (D.I. 16 at 7-8.) However, Plaintiff’s failure to exhaust his administrative remedies is dispositive and, therefore, I need not consider Defendant’s other arguments.

here, the Complaint is filed *pro se*. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (citations omitted). A *pro se* Complaint can only be dismissed for failure to state a claim if it appears “beyond doubt that a plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

#### IV. DISCUSSION

Prior to bringing a claim under 42 U.S.C. § 1983, an inmate must first exhaust the administrative remedies available to him pursuant to the PLRA. See *Nyhuis v. Reno*, 204 F.3d 65, 67 (3d Cir. 2000); *Booth v. Churner*, 206 F.3d 289, 295 (3d Cir. 2000). Section 1997e(a) of the PLRA provides that:

[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as available are exhausted.

Since 42 U.S.C. § 1997e(a) applies to all inmate claims except those challenging the fact of duration and confinement, Plaintiff’s Complaint is subject to the exhaustion of remedies requirement under Section 1997e(a). See *Porter v. Nussle*, 534 U.S. 516, 532 (2002) (“PLRA’s exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.”); see also *Nyhuis*, 204 F.3d at 75 (The policies underlying the exhaustion requirement “include [] avoiding premature interruption of the administrative process and giving the agency a chance to discover and correct its own errors[, and] conserving scarce judicial resources.”).

In the Offender Orientation Manual, which every inmate at SCI receives, the Residence Grievance Procedure section states that, “Complaints about staff conduct

are to be hand delivered to the secure mailbox of the Warden in each unit in letter form for investigation. They are not an issue for the grievance system.” (D.I. 16 at A-5.)

There is no indication from Plaintiff’s Complaint, nor is there any other evidence, which indicates that Plaintiff delivered a complaint to the Warden so that a proper investigation could be performed. Therefore, Plaintiff has not exhausted the administrative remedies available to him, and set forth in the SCI Offender Orientation Manual, prior to filing this action.

V. CONCLUSION

Plaintiff failed to exhaust his administrative remedies pursuant to 42 U.S.C. § 1997e. Accordingly, IT IS HEREBY ORDERED that Defendant’s Motion (D.I. 15) is GRANTED.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

March 18, 2003  
Wilmington, Delaware