UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6813

LARRY WILLIAMS,

Plaintiff - Appellant,

v.

SCOTT B. LEWIS; SUSAN M. DUFFY; FELICIA OGUNSILE; ADAM T. BRADBURN; CAPTAIN LANE; OFFICER BUTLER, Unit Counselor; WARDEN GLAND,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Mary G. Lewis, District Judge. (5:19-cv-00182-MGL)

Submitted: September 24, 2020 Decided: September 29, 2020

Before HARRIS and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Larry Williams, Appellant Pro Se. Michael Todd Smith, LOGAN, JOLLY & SMITH, LLP, Anderson, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry Williams appeals the district court's order accepting the recommendation of the magistrate judge, dismissing Williams' 42 U.S.C. § 1983 claim for failure to exhaust administrative remedies, and declining to exercise supplemental jurisdiction over Williams' remaining state law claim. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Williams v. Lewis*, No. 5:19-cv-00182-MGL (D.S.C. May 19, 2020). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: September 29, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6813, Larry Williams v. Scott Lewis
5:19-cv-00182-MGL

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. (www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

LARRY WILLIAMS, Plaintiff,	§	
vs.	§	CIVIL ACTION 5:19-CV-0182-MGL-KDW
SCOTT B. LEWIS, SUSAN M. DUFFY, FELICIA OGUNSILE, ADAM T. BRADBURN, CAPT. LANE, UNIT COUNSELOR BUTLER, and WARDEN GLAND, Defendants.	§	

ORDER ADOPTING THE REPORT AND RECOMMENDATION, GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S FEDERAL CLAIM, AND REMANDING HIS STATE CLAIM TO STATE COURT

Larry Williams (Williams) brought his 42 U.S.C. § 1983 cause of action, Complaint at 5, coupled with his state claim of emotional and mental distress claim, *id.* at 6, against Defendants Scott B. Lewis, Susan M. Duffy, Felicia Ogunsile, Adam T. Bradburn, Captain Lane, Unit Counselor Butler, and Warden Gland (Defendants). The Court liberally construes Williams's emotional and mental distress claim as an intentional infliction of emotional distress cause of action. Williams is self represented.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting Defendants' motion for summary judgment be granted.

For the most part, Williams's objections are non-specific and fail to directly address the Magistrate Judge's reasoning in the Report. On page one of the attachment to the Report, however, the Magistrate Judge instructed Williams to file specific objections:

> Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.
>
> ****
>
> Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985);*Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir.1984).

Attachment to Report at 1.

"A general objection to the entirety of the magistrate's report has the same effects as would a failure to object." *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991). In such a case, the Court "need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record . . . to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

To the extent Williams offers specific objections, he does so by providing the date he says he took the first step in the grievance procedure. But, he fails either to (1) say, even in a conclusory fashion, he actually completed the grievance process, or (2) offer any proof he did so. These failures are fatal to Williams's claims.

Further, on page two of the additional attachment the Clerk entered on May 7, 2020, Williams states "Chief Judge . . . Ralph K. Anderson III is hearing this case in [the South Carolina Administrative Law Court]." With this statement, Williams appears to agree he has failed to exhaust his administrative remedies before he filed this lawsuit. But, the exhaustion requirement of the

Prison Litigation Reform Act . . . demands that an inmate exhaust "such administrative remedies as are available" before bringing suit to challenge prison conditions." *Ross v. Blake*, 136 S.Ct. 1850, 1852 (2016) (quoting 42 U.S.C. § 1997e(a). Williams failed to do that. Consequently, the Court will overrule Williams's objections.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report to the extent it does not contradict this Order, and incorporates it herein. Therefore, it is the judgment of the Court Defendants' motion for summary judgment is **GRANTED** as to Williams's federal claim because of Williams's failure to exhaust his administrative remedies and this claim is **DISMISSED WITHOUT PREJUDICE**.

Therefore, Williams's intentional infliction of emotional distress state claim is all that remains. The Court may decline to exercise supplemental jurisdiction over a state law claim if it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367. The Court has "wide discretion" to do so. *Yashenko v. Harrah's NC Casino Co.*, 446 F.3d 541, 553 n.4 (4th Cir. 2006).

When determining whether to decline to exercise supplemental jurisdiction, the Court considers "convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy." *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995). Here, there is no indication Williams's remaining state law claim would inconvenience or unfairly prejudice the parties, nor does the Court find any underlying issues of federal policy involved in these state law claims.

Other courts in this district, when faced with similar circumstances have dismissed the federal claims and remanded the state claims to state court. *See, e,g., Sutherland v. South Carolina Department of Corrections*, No. 0:19-cv-2106-JFA, 2020 WL 1672533, at *2–3 (D.S.C., April 6, 2020) (granting the defendants' motion for summary judgment as to the plaintiff's federal claims

for his failure to exhaust his administrative remedies and declining to exercise supplemental jurisdiction over the plaintiff's remaining state law claims); *Simpson v. S.C. Dep't of Corr.*, No. 2:17-cv-3031-RMG, 2019 WL 4254228, at *5 (D.S.C. Sept. 9, 2019) (granting summary judgment on federal claims for failure to exhaust, declining to exercise supplemental jurisdiction over the remaining state law claims and remanding the state law claims to state court noting, "there is no indication that remanding the state law claims would inconvenience or unfairly prejudice the parties, nor does the Court find any underlying issues of federal policy involved in these state law claims"); *Johnson v. Ozmint*, No. 9:08-cv-0431-PMD, 2009 WL 252152, at *6 (D.S.C. Feb. 2, 2009) (dismissing federal claims for failure to exhaust administrative remedies and noting, "With respect to these remaining state law causes of action, when federal claims presented in a case which has been removed to federal court from state court are dismissed, the case should be remanded to state court for resolution of any remaining state law claims . . . .").

The Court agrees with the reasoning of those other courts. Therefore, it declines to exercise supplemental jurisdiction over William's state intentional infliction of emotional distress claim. As such, that claim is **REMANDED** to the Richland County Court of Common Pleas.

IT IS SO ORDERED.

Signed this 19th day of May, 2020, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

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NOTICE OF RIGHT TO APPEAL

Williams is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to the Federal Rules of Appellate Procedure.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Larry Williams, Plaintiff, v. Scott B. Lewis, Susan M. Duffy, Felicia Ogunsile, Adam T. Bradburn, Capt. Lane, Unit Counselor Butler and Warden Gland, Defendants.	)	C/A No. 5:19-CV-00182-MGL-KDW REPORT AND RECOMMENDATION

Plaintiff, proceeding pro se, brought this civil rights action under 42 U.S.C. § 1983 alleging violations of his constitutional rights during his confinement at Perry Correctional Institution ("PCI'). This matter is before the court on Defendants' Motion for Summary Judgment, filed December 6, 2019. ECF No. 142. As Plaintiff is proceeding pro se, the court entered a *Roseboro*[1] order on December 9, 2019, advising Plaintiff of the importance of such motions and the need for him to file a response. ECF No. 143. Plaintiff responded to Defendants' motion on January 27, 2020. ECF No. 168. Accordingly, this motion is now ripe for consideration.

This case was referred to the undersigned United States Magistrate Judge for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Civil Rule 73.02(B)(2)(d) and (e), D.S.C. Because this motion is dispositive, a Report and Recommendation is entered for the court's review. For the reasons outlined below, the undersigned recommends that Defendants' Motion for Summary Judgment be ***granted.***

[1] *Roseboro v. Garrison*, 528 F. 2d 309 (4th Cir. 1975) (requiring that the court provide explanation of dismissal/summary judgment procedures to pro se litigants).

I. Background

Plaintiff first filed his Complaint, Case No. 2018-CP-40-03195, on June 19, 2018 in the Court of Common Pleas in Richland County, South Carolina. ECF No. 1-1. Plaintiff alleged that his placement in the Restrictive Housing Unit ("RHU") at PCI from April 9, 2018 to May 30, 2018 constituted cruel and unusual punishment in violation of the Eighth Amendment. *Id.* On January 22, 2019, Defendants removed the case to this court based on 28 U.S.C. § 1441(a) and 1446. ECF No. 1. Defendants filed their Motion for Summary Judgment on December 6, 2019. ECF No. 142. Plaintiff responded to Defendants' motion on January 27, 2020. ECF No. 168.

II. Standard of Review

The court shall grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant bears the initial burden of demonstrating that summary judgment is appropriate; if the movant carries its burden, then the burden shifts to the non-movant to set forth specific facts showing that there is a genuine issue for trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). If a movant asserts that a fact cannot be disputed, it must support that assertion either by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials;" or "showing . . . that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1).

In considering a motion for summary judgment, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, "[o]nly disputes over facts

that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* at 248. Further, while the federal court is charged with liberally construing a Complaint filed by a pro se litigant to allow the development of a potentially meritorious case, *see, e.g.*, *Cruz v. Beto*, 405 U.S. 319, 322 (1972), the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts that set forth a federal claim, nor can the court assume the existence of a genuine issue of material fact when none exists. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

III. Analysis

A. Plaintiff has failed to exhaust his administrative remedies.

Defendants argue that they are entitled to summary judgment because Plaintiff has failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321 (codified as amended at 42 U.S.C. § 1997e(a) (1996)). ECF No. 142-1 at 2. The PLRA mandates, among other things, that prisoners exhaust their administrative remedies prior to filing civil actions. *See Jones v. Bock*, 549 U.S. 199, 211 (2007). Exhaustion is required for "[a]ll action[s] . . . brought with respect to prison conditions, whether under § 1983 or any other Federal law." *Porter v. Nussle*, 534 U.S. 516, 524 (2002) (internal quotations omitted). The 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." *Porter,* 534 U.S. at 532. Exhaustion is a threshold requirement which must be satisfied for prisoner complaints to proceed. *See Jones*, 549 U.S. at 216; *Booth v. Churner*, 532 U.S. 731, 741 (2000). Although PLRA exhaustion is not jurisdictional, failure to exhaust is an affirmative defense that can be pleaded by the defendants. *Jones*, 549 U.S.

at 216. No unexhausted claims may be considered by the court; such claims must be dismissed. *Jones*, 549 U.S. at 211. The PLRA requires "proper" exhaustion, that is, "a prisoner must file complaints and appeals in the place, and at the time, the prison's administrative rules require." *Woodford v. Ngo*, 548 U.S. 81, 93 (2006).

"Requiring exhaustion allows prison officials an opportunity to resolve disputes concerning the exercise of their responsibilities before being hauled into court." *Jones*, 549 U.S. at 204. It also has the potential to reduce the number of inmate suits and to improve the quality of suits that are filed by producing a useful administrative record. *Id.*; *Woodford*, 548 U.S. at 93-95. "When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved." *Woodford*, 548 U.S. at 95. The South Carolina Department of Corrections Policy regarding inmate grievances is set out in Policy GA-01.12 entitled Inmate Grievance System. Section 13.2 of this policy states that "Inmates must make an effort to informally resolve a grievance by submitting a Request to Staff Member Form to the appropriate supervisor/staff within eight (8) working days of the incident." The policy also requires that "[e]exceptions to policy must be requested, and approved through the Chief, Inmate Grievance Branch."

Defendants claim they are entitled to summary judgment because Plaintiff did not submit a Request to Staff Member Form as required by South Carolina Department of Corrections ("SCDC") policy. ECF No. 142-1 at 3. In support of this argument, Defendants submit the Affidavit of Sherman Anderson, SCDC Inmate Grievance Coordinator. ECF No. ECF No. 142-2. SCDC Policy requires inmates to "first make every effort to resolve grievances informally by submitting a Request to Staff Member (RTSM) Form to the appropriate supervisor/staff within eight (8) working days of the incident." *Id.* at 2. In his affidavit, Mr. Anderson states that "Plaintiff

Larry Williams, inmate #094203, failed to ma[ke] any attempt to informally resolve a grievance by submitting a Request to Staff Member (SCDC Form 19-11) or a RTSM through the kiosk to the proper staff member. SCDC Policy/Procedure GA-01.12, Section 13." *Id.* Plaintiff's Response, ECF No. 168, does not address Defendants' argument that he has failed to exhaust his administrative remedies, nor does it include copies of the required RTSM Forms. Therefore, the undersigned concludes there are no issues of genuine material fact related to whether or not Plaintiff has exhausted his administrative remedies and that the PLRA bars Plaintiff's suit from moving forward.

B. Plaintiff has not raised any issues of material fact that his constitutional rights were violated.

Defendants alternatively argue that even if the court should conclude that Plaintiff has exhausted his administrative remedies and can proceed, the conditions-of-confinement allegations raised in Plaintiff's Complaint do not rise to the level of constitutional deprivation under the Eighth Amendment, making summary judgment appropriate. ECF No. 142-1 at 4. Plaintiff asserts that he was "placed on lockup for no reason at all" and with no warning or charge of misconduct. ECF No. 168 at 1.

In order to state an Eighth Amendment violation with respect to prison conditions, a prisoner must show: "(1) a serious deprivation of a basic human need; and (2) deliberate indifference to prison conditions on the part of prison officials." *Williams v. Griffin*, 952 F.2d 820, 824 (4th Cir. 1991). To establish the subjective component of a conditions-of-confinement claim, a prisoner must show that prison officials acted with deliberate indifference—that is, the prisoner must show that the officials acted with more than mere negligence but less than malice. *See Williams v. Benjamin*, 77 F.3d 756, 761 (4th Cir. 1996); *see also Farmer v. Brennan*, 511 U.S. 825, 835–37 (1994). For the objective component of a conditions-of-confinement claim, the

prisoner must demonstrate an extreme deprivation of his rights. *See Williams v. Branker*, 462 F. App'x. 348, 353 (4th Cir. 2012).

The conditions of confinement of which Plaintiff complains do not rise to the level of an Eighth Amendment violation. The Defendants, in support of their position that Plaintiff's claims do not arise to the level of a constitutional violation have submitted the affidavit of Warden Scott Lewis. ECF No. 142-3. Here, Warden Lewis explains that Plaintiff was placed in a Restrictive Housing Unit on April 9, 2018 and moved back to his regular dorm on May 30, 2018. Lewis Aff. ¶ 4, ECF No. 142-3. He adds that Plaintiff was placed in the Restrictive Housing Unit because the "inmate was a threat to the physical safety of other inmates and staff." *Id.*[2] Plaintiff responds that he was "place[d] on lock up for no reason and with no right [sic] up and with no charges at all." ECF No. 168 at 1. However, Plaintiff has not put forth any evidence to support this claim. The Fourth Circuit has held that the restrictive conditions of high security incarceration do not rise to the level of cruel and unusual punishment. *In re Long Term Administrative Segregation of Inmates Designated as Five Percenters,* 174 F.3d 464, 471 (4th Cir.1 999) ("These conditions are indeed restrictive, but the restrictive nature of high-security incarceration alone does not constitute cruel and unusual punishment."). The undersigned finds that Plaintiff has failed to offer any evidence of deliberate indifference nor has Plaintiff demonstrated an extreme deprivation of his rights. Therefore, the undersigned additionally recommends granting Defendants' Motion for Summary Judgment, ECF No. 142, because Plaintiff's vague allegations do not rise to a level of constitutional deprivation.

[2] In his affidavit, Warden Lewis references an "attached Pre-Hearing Detention Placement/Extension, Section 'Notice of Placement'." ¶ 5, ECF No. 142-3. However, this document was not attached to his affidavit or filed with the court.

IV. Conclusion

Based on the foregoing, the undersigned recommends granting Defendants' Motion for Summary Judgment. ECF No. 142.

IT IS SO RECOMMENDED.

March 25, 2020
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge

The parties are directed to note the important information in the attached "Notice of Right to File Objections to Report and Recommendation."