

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-056

JUNE TERM, 2007

Paul Murphy	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Superior Court
	}	
Sister Janice Ryan, Ray Flum and Superintendent Michael O'Malley	}	DOCKET NO. 286-6-05 Wrcv

Trial Judge: Theresa S. DiMauro

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals an order of the superior court granting summary judgment to defendants on plaintiff's claim of negligence related to the conditions of his confinement. We affirm.

At no point in this proceeding has plaintiff contested the underlying facts. Plaintiff is in the care and custody of the Vermont Department of Corrections, serving a sentence for crimes including aggravated assault, simple assault, and escape or walkaway. Between August 2004 and December 2005, while incarcerated at the Southern State Correctional Facility in Springfield, Vermont, plaintiff assaulted other inmates on a number of occasions. Specifically, plaintiff attacked inmates who were either sex offenders or homosexual. Plaintiff was convicted through administrative disciplinary proceedings and was placed in segregated confinement. Plaintiff filed this suit, claiming that the discipline imposed on him was unlawful and the result of negligence on the part of corrections personnel. Plaintiff maintained that corrections officials were negligent in housing plaintiff with inmates who were homosexual and/or sex offenders. Defendants filed a motion to dismiss or, in the alternative, for summary judgment, asserting that plaintiff's claim was barred because he has failed to exhaust his administrative remedies—namely, the DOC's internal grievance procedure. While plaintiff had filed grievances related to other issues, he had not filed a grievance on the same matter as was the subject of his suit. The superior court granted the motion for summary judgment, to which plaintiff filed no substantive opposition, relying on our decision in Jordan v. State for the proposition that administrative remedies, where available, must be exhausted prior to filing suit in court. 166 Vt. 509, 511 (1997) (“This Court has consistently held that when administrative remedies are established by statute or regulation, a party must pursue, or ‘exhaust,’ all such remedies before turning to the courts for relief.”).

On appeal, plaintiff does not contest the basis for the superior court's decision, but contends that he was previously ignorant of the exhaustion requirement. In the interim, plaintiff contends, he

has pursued his administrative remedies through the DOC. Accordingly, plaintiff requests that judgment be entered in his favor, and/or that this court order depositions. The development of a factual record is a matter for the trial courts. Our review is confined to the existing record on appeal. Plaintiff has not demonstrated or even alleged error in the superior court's decision; there is no basis for reversal.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice