

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 20, 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. 97-2836**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**BRIAN MAUS,**

**PLAINTIFF-APPELLANT,**

**v.**

**CORWIN VANDERARK, ROBERT KENT, JAMES HOOVER,  
FREDERICK LANDRY, STEPHEN WELLENS, JAMES ZANON,  
JAMES REID, JOSEPH CALLAHAN, JEFF JOHNSON,  
JAMES CYGAN, WILLIAM HALVERSON, MICHAEL  
OBREBAC, ROBERT NOVITSKI, GARY LUNDE, BARBARA  
STAUDENMAIER, BARBARA ROBERTSON, GERALD  
GRASSEL, AND WENDY BRUNS,**

**DEFENDANTS-RESPONDENTS.**

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

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

PER CURIAM. Brian Maus, an inmate at Green Bay Correctional Institution (GCI), appeals pro se the trial court's order dismissing his action brought pursuant to 42 U.S.C. § 1983 against Corwin VanderArk, the warden of GCI, and other employees of the institution. The issue is whether Maus failed to exhaust his administrative remedies before bringing this action. We conclude that Maus failed to exhaust his remedies and affirm the trial court's order.

According to Maus, several employees of GCI strip searched him, sexually assaulted him, and placed him in segregation. They then issued a conduct report charging him with disorderly conduct and disobeying orders because he failed to comply with their orders during the strip search.

Prior to his disciplinary hearing on the conduct report, Maus requested that the guards who searched him be present at the hearing as witnesses. On October 3, 1995, the day the hearing was held, the guards were not present because they were not on duty. After Maus was found guilty of the charges, he appealed to the warden. On October 13, 1995, the warden remanded the case for rehearing because the witnesses or their statements should have been collected and considered in making the decision.

On October 18, 1995, the warden sent Maus a memorandum stating that his rehearing on the conduct report would be held "as soon as possible," but that Maus would be held in segregation until the rehearing was held. On November 5, 1995, Maus complained to the warden that he had not yet had a rehearing. On November 9, 1995, the warden responded by telling Maus that there was no time limit for a new hearing on remand. After yet another inquiry from Maus, the warden sent him a memorandum in explaining that his release from segregation "would be determined by [his] behavior."

On November 13, 1995, Maus filed a complaint with the institution complaint examiner, the proper procedure when an inmate has a grievance about prison conditions, stating that he had not yet been given a rehearing on his conduct report. The examiner dismissed the complaint, explaining:

The ICRS [Inmate Complaint Review System] may be used to challenge the procedure used by the adjustment committee or hearing officer, however I do not believe this is what inmate Maus is doing. It appears that he is challenging the (contents of the) conduct report itself, and as such is not within the scope of the ICRS.

When inmate Maus appealed conduct report #686857, the Warden remanded it back to the Adjustment Committee for re-hearing, with the comments that witnesses or their statements should have been collected and considered in making a decision. The Security Director advised the ICE [Inmate Complaint Examiner] that witness statements were collected and a re-hearing held, with the disposition remaining the same. I do not find it necessary for the inmate to be present at that re-hearing. The witness statements are attached to the conduct report, which indicates to me that the Warden's directive was followed, however I could not find documentation of the re-hearing included. It is therefore my recommendation that this complaint be dismissed....

After receiving the ICE's decision, Maus requested and was given the statements of the officers, but was not given documents he requested relating to the second hearing because the records office "was advised by security that there were no further hearings." On February 5, 1996, Maus was released from segregation.

Maus filed an action in the trial court pursuant to 42 U.S.C. § 1983, contending that his constitutional rights were violated. He contended that the officers sexually assaulted him and then held him illegally in segregation because

a rehearing was never held on the conduct report as ordered by the warden.<sup>1</sup> The trial court dismissed the complaint because it concluded that Maus had not exhausted his administrative remedies.

A prisoner bringing an action under federal law challenging prison conditions must first exhaust all administrative remedies. *See* 42 U.S.C. 1997(e). Similarly, a prisoner attempting to challenge conditions of confinement under state law must also exhaust his or her administrative remedies that the Department of Corrections has promulgated by rule. *See* § 801.02(7)(b), STATS.<sup>2</sup>

Maus contends that he exhausted his administrative remedies because he appealed his conduct report to the warden, the warden ordered that a new hearing be held, but none was held, thus precluding Maus from further relief. We disagree.

Maus brought this action in the trial court to challenge the conditions of his confinement, specifically arguing that he was sexually assaulted and was denied his constitutional rights when a rehearing on the conduct report was not held. Because Maus's claim is for damages inflicted upon him based on this alleged denial of constitutional rights, he was required to first pursue his administrative remedies through the inmate complaint review system. *See* WIS. ADM. CODE Chapter DOC 310. Although Maus filed a complaint with the inmate complaint review examiner, he never appealed the examiner's adverse decision to the corrections complaint examiner. *Cf.* WIS. ADM. CODE § DOC 310.13.

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<sup>1</sup> In its respondent's brief, the State suggests that Maus complains about the timing of the rehearing. In fact, Maus states in his complaint that a rehearing was never held.

<sup>2</sup> From Maus's complaint, it appears that his claims are grounded in federal law. The trial court, however, stated that it was dismissing both federal and state claims in its order.

Because Maus failed to pursue his claim of constitutional violation through the inmate complaint review system, he may not bring an action predicated on 42 U.S.C. § 1983 in the trial court because he has failed to exhaust his administrative remedies. *See* WIS. ADM. CODE § DOC 310.04. Maus's contention that he could not proceed with further review of the conduct report because a rehearing was not held, if true, entitles him only to certiorari review of his guilt on the charges in the conduct report. It does not entitle him to bring a civil rights action for deprivation of constitutional rights.

*By the Court.*—Order affirmed.

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

