

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

HAROLD EDGAR STRICKLAND,)	Civil Action No. 7:11cv00358
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION AND</u>
)	<u>ORDER</u>
)	
DR. HENREY WANG <i>et al.</i> ,)	
)	
Defendants.)	By: Samuel G. Wilson
)	United States District Judge

Plaintiff Harold Edgar Strickland, a Virginia inmate proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983 and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”), claiming that the defendants, Dr. Laurence S. Wang, Sheriff Michael S. Mondul, Officer Kevin Meadows,¹ the City of Danville, and the Director of the Danville Adult Detention Center, showed deliberate indifference to Strickland’s Crohn’s disease and discriminated against him based on that disability. Strickland’s claims arise from three separate periods of incarceration—two at the Danville City Jail (the “Jail”) and one at the Danville Adult Detention Center (the “Detention Center”). Strickland seeks to hold Captain Meadows, the City of Danville, and the Director of the Danville Adult Detention Center liable for their actions during Strickland’s confinement at the Detention Center; Sheriff Mondul liable for his conduct during Strickland’s confinement at the Jail; and Dr. Wang liable for his actions during all three periods of confinement. Those three groups of defendants have separately moved for summary judgment on Strickland’s claims. The common thread in the defendants’ motions is that Strickland failed to exhaust his administrative remedies during each period of confinement and therefore, under 42

¹ In his complaint, Strickland identifies Dr. Wang as “Dr. Henry Wang” and “Dr. Henrey Wang,” Sheriff Michael Mondul as “Sheriff Mike Mondule,” and Officer Kevin Meadows as “Captain Meadows.” The correct names, according to the defendants, are Dr. Laurence S. Wang, Sheriff Michael S. Mondul, and Officer Kevin Meadows. The Clerk shall accordingly change the style of this case.

U.S.C. § 1997e(a), may not proceed with this action. In response, Strickland has made multiple (and sometimes conflicting) sworn statements to the effect that the defendants refused to provide grievance forms and failed to respond to any grievances that he did manage to file. Because the resolution of this dispute is potentially dispositive, the court finds that judicial resources are well spent in an attempt to resolve it before proceeding further. Accordingly, the court will take the defendants' summary judgment motions under advisement and refer this matter to the Magistrate Judge to conduct an evidentiary hearing on the issue of exhaustion.

I.

Since December of 2009, Strickland has been incarcerated at least four times. The first of those was at the Jail, where he informed prison staff that he had Crohn's disease² and requested treatment for the condition. Dr. Wang evaluated Strickland and prescribed a course of treatment for which Strickland later expressed his thanks to prison staff for "making special arrangements." (Br. Supp. Mot. Summ. J. Ex. F, ECF No. 45-6.) Strickland was released on January 11, 2010, but returned to the Jail before March. There, again, Strickland informed staff of his condition and received an examination and a course of treatment from Dr. Wang. On May 4, 2010, Strickland was released from the Jail and transferred to the Detention Center. Strickland claims he saw Dr. Wang at the Detention Center for an intake examination and pleaded for treatment, but that Detention Center staff (Officer Meadows, specifically) refused to provide it. In late July, he was released. Once again, in November of 2010, Strickland returned to Jail. He claims that he was not allowed to see a doctor for nearly two months and that he suffered grievously during that period.

² Crohn's disease is an autoimmune disorder that results in chronic inflammation of the gastrointestinal tract. The symptoms range from cramping to internal bleeding. See Crohn's Disease, <http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001295/> (last visited October 31, 2012).

According to the defendants, Strickland did not suffer as he describes and, tellingly, filed exactly one (unrelated) grievance during his various incarcerations. Strickland makes all manner of sworn statements in response: “the city jail . . . refused to answer my grievances about medical care and diet” (ECF No. 86-3, 4); “I did exhaust Administrative rem[e]dies at the City Jail” (ECF No. 86-3, 4–5); “I filed a grievance requesting a special diet and medications” (ECF No. 56-4, 2); “Major Witcher dis[]regarded my grievances” (ECF 86-2, 4); “I specifically sent my grievances to Major Witcher” (*id.*); “I did file at least 2 grievances in regards to my diet and medical” (ECF No. 86-3, 3); “I started writing grievances and got no responses” (ECF No. 56-6, 4); “I could never get the deputies to bring me a grievance back they would always just give me a verbal response” (ECF No. 56-6, 11). Whatever the truth of those assertions, Strickland claims that the defendants displayed deliberate indifference to his serious medical needs and discriminated against him based on his Crohn’s disease, thus entitling him to compensatory and punitive damages under § 1983 and the ADA.

II.

The defendants argue that Strickland never exhausted his administrative remedies and consequently may not bring an action related to prison conditions under § 1983 or the ADA. Strickland alternately claims (1) that he exhausted his administrative remedies and (2) that he attempted to exhaust his administrative remedies but the Jail and Detention Center stymied his efforts. Because this relatively simple dispute is potentially strongly dispositive, and because the current record offers little more than bare but diametrically opposed assertions, the court will refer the matter to the Magistrate Judge to determine whether any reasonable fact finder could conclude that Strickland has exhausted his administrative remedies or that the defendants prevented him from doing so.

The Prison Litigation Reform Act (“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, until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). “The exhaustion requirement is mandatory, and courts lack the authority to waive that requirement.” Graham v. Gentry, 413 Fed. App’x 660, 663 (4th Cir. 2011) (citing Porter v. Nussle, 534 U.S. 516, 532 (2002)). The exhaustion requirement is vital because it “allow[s] a prison to address complaints about the program it administers before being subjected to suit, reduc[es] litigation to the extent complaints are satisfactorily resolved, and improv[es] litigation that does occur by leading to the preparation of a useful record.” Jones v. Bock, 549 U.S. 199, 219 (2007). The PLRA demands exhaustion even if the prisoner is requesting relief that the relevant administrative body has no power to grant, Porter, 534 U.S. at 532, or if the prisoner believes that exhaustion is futile, Booth v. Churner, 532 U.S. 731, 741 (2001). Prison officials may not take unfair advantage of the exhaustion requirement, however, and a remedy becomes “unavailable” if prison employees do not respond to a properly filed grievance, or if they otherwise act to prevent a prisoner from exhausting his administrative remedies. See Moore v. Bennett, 517 F.3d 717, 725 (4th Cir. 2008). Thus, a court may excuse a prisoner’s failure to exhaust an administrative remedy if a prisoner “through no fault of his own, was prevented from availing himself of” the remedy. Id.

Here, the defendants argue that Strickland has no right to relief because he did not attempt to resolve the matter through the established grievance processes, and Strickland swears to essentially the opposite. Though the record on this point presently offers little more than counterstatements, the parties have referred to additional (potentially sensitive) documentation that could be brought to bear on the question. If, in light of that documentation and any other

available evidence, no reasonable juror could conclude that Strickland has exhausted, or excusably failed to exhaust, his administrative remedies, the court will grant the defendants' motions for summary judgment and this matter will come to an end. And, if not, this action will proceed. Accordingly, the court will hold the defendants' motions under advisement while the Magistrate Judge conducts an evidentiary hearing and files a report and recommendation on the issue of exhaustion.

III.

For the reasons stated, it is hereby **ORDERED** and **ADJUDGED** that the defendants' motions for summary judgment are **TAKEN UNDER ADVISEMENT** and this matter is **REFERRED** to United States Magistrate Judge Robert S. Ballou pursuant to 28 U.S.C. § 636(b)(1)(b) for an evidentiary hearing and a report and recommendation. Further, the Clerk is **DIRECTED** to change the style of this case consistent with footnote one of this memorandum opinion, and to send a copy of this memorandum opinion and order to the plaintiff.

ENTER: November 2, 2012.

UNITED STATES DISTRICT JUDGE