

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000548-MR

WILLIAM A. SHECKLES, JR.

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
ACTION NO. 05-CI-00297

KENTUCKY DEPARTMENT OF CORRECTIONS  
AND OFFICER HERSTON ORCUTT

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, JUDGE; BUCKINGHAM AND HENRY, SENIOR JUDGES.<sup>1</sup>

ACREE, JUDGE: William Sheckles appeals from an order of the Boyle Circuit Court dismissing a complaint he filed against the Kentucky Department of Corrections (the Department) and Officer Hurston Orcutt for failure to exhaust his administrative remedies as required by law. Sheckles argues that Orcutt's actions prevented him from

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<sup>1</sup> Senior Judge David C. Buckingham and Senior Judge Michael L. Henry sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

exhausting his administrative remedies and, thus, the requirement should be waived. We disagree and affirm the circuit court.

Sheckles, an inmate at Northpoint Training Center, filed a complaint against the Department and Orcutt on June 17, 2005, alleging sexual misconduct by the latter and requesting in excess of fifteen million dollars (\$15,000,000.00) in damages. He claimed that Orcutt, in the course of his employment as a corrections officer, subjected Sheckles to inappropriate touches and sexually suggestive remarks. According to Sheckles, he was unable to file a grievance against Orcutt because Orcutt threatened him. The Department filed a response and motion to dismiss the complaint due to Sheckles' failure to exhaust his administrative remedies. In his reply, Sheckles asked the circuit court to waive the exhaustion of remedies requirement. On February 17, 2006, the circuit court entered an order dismissing Sheckles' complaint for failure to exhaust administrative remedies. This appeal followed.

On appeal, Sheckles argues the circuit court erred in failing to separately rule on his request to waive the exhaustion of remedies requirement. Without directly addressing this request, the circuit court entered an order dismissing the complaint in its entirety for failure to exhaust administrative remedies prior to its filing. The circuit court cited Kentucky Revised Statute (KRS) 197.020 which requires the Department of Corrections to promulgate administrative regulations to govern the conduct of officials and inmates within its penitentiaries. Northpoint has, pursuant to statute, promulgated a policy governing the grievance procedure available to inmates. KRS 454.415(1)

prohibits actions by inmates challenging prison conditions until administrative remedies have been exhausted. *Houston v. Fletcher*, 193 S.W.3d 276, 278 (Ky.App. 2006). There is no statutory authority for the circuit court to waive the exhaustion of remedies requirement. While there are exceptions to the requirement that one seeking relief exhaust administrative remedies available to him, Sheckles presented no credible evidence that the administrative remedy was unconstitutional, futile or otherwise unavailable to him, or that the agency itself exceeded its authority. *Adkins v. Com.*, 614 S.W.2d 950, 953 (Ky.App. 1981). In fact, had he pursued the proper course, he would have been alerting Orcutt's supervisors to the alleged conduct and this, absent corruption of the entire corrections system, would have had a salutary effect on Sheckles' circumstances.

Our review of the record convinces us that, even if one were required, the only appropriate specific ruling on this issue would be denial. In his original complaint, Sheckles describes two alleged and unsubstantiated incidents of inappropriate touches and sexually suggestive comments by Orcutt. Sheckles claims that he called Orcutt a “freak” in response to the officer's behavior and stated that he would file a grievance against him. According to Sheckles, the officer stated that he would deny the accusation, have Sheckles placed in administrative segregation, and slow the pace of the investigation. Sheckles claims that because of Orcutt's response, he chose not to file a grievance at the time of these incidents. Quite telling is the fact that even after Orcutt's employment at Northpoint terminated, Sheckles did not attempt to initiate an

administrative grievance procedure. Rather, he tried to bypass the grievance procedure entirely by filing a complaint directly with the circuit court. Sheckles now attempts to convince us that these comments amounted to threats severe enough to prevent him from filing a grievance. We disagree.

Finally, Sheckles claims the circuit court abused its discretion when it dismissed his complaint. We have already held that Sheckles' complaint was barred by his failure to follow the statutory requirements on exhaustion of remedies and, further, that the circuit court had no basis, legal or factual, upon which to waive those requirements. Consequently, the circuit court acted properly in dismissing Sheckles' complaint.

For the foregoing reasons, the judgment of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEES

William A. Sheckles, Jr., *Pro Se*  
Burgin, Kentucky