

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

NATHANIEL BUCHANAN,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	No. 05-3050-KHV
)	
N. L. CONNER, et al.,)	
)	
Defendants.)	
_____)	

ORDER

Nathaniel Buchanan, a federal prisoner at the United States Penitentiary in Leavenworth, Kansas (“USP-Leavenworth”) filed suit *pro se* against N. L. Conner, former Warden of USP- Leavenworth, and D. A. Nitchals, J. Good and C. Pierce in their official and individual capacities. Under the Federal Torts Claim Act (“FTCA”), 28 U.S.C. §§ 1346, 2671-2680, and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), plaintiff alleges that defendants violated his Fifth and Eighth Amendment rights when they placed him in administrative segregation based on false allegations; assigned him to a behavioral modification program which was personally stigmatizing; denied him adequate clothing, meals, recreation and family visits, placed him in a cell with inadequate ventilation and lighting; and provided derogatory and inflammatory information to the parole board. On November 22, 2005, the Court dismissed plaintiff’s claims against Conner. See Doc. #30. This matter is before the Court on the remaining Defendants’ Motion To Dismiss (Doc. #24) filed October 6, 2005, which plaintiff has not opposed. Under Rules 6(a) and (e), Fed. R. Civ. P., and D. Kan. Rule 6.1(d)(2), plaintiff had until October 31, 2005 to file a response. Pursuant to D. Kan. Rule 7.4, “[i]f a respondent fails to file a

response within the time required by Rule 6.1(d), the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.”

The Court has reviewed the record and finds that dismissal is appropriate for substantially the same reasons as those stated in the Memorandum In Support Of Defendants’ Motion To Dismiss (Doc. #25) filed October 6, 2005. Specifically, the Court finds that plaintiff has failed to exhaust administrative remedies with respect to his claims that defendants denied him adequate clothing, meals and recreation; placed him in a cell with inadequate ventilation and lighting; and provided derogatory and inflammatory information to the parole board. In light of plaintiff’s failure to exhaust administrative remedies with respect to all of his claims, the Court must ordinarily dismiss the entire action without prejudice. See Ross v. County of Bernalillo, 365 F.3d 1181, 1190 (10th Cir. 2004).

IT IS THEREFORE ORDERED that Defendants’ Motion To Dismiss (Doc. #24) filed October 6, 2005 be and hereby is **SUSTAINED**. Plaintiff’s claims against D. A. Nitchals, J. Good and C. Pierce are dismissed without prejudice.

Dated this 15th day of December, 2005 at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge