IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

JAMES E. OVERBY, et al., Plaintiffs,

v.

CASE NO. 06-3263-SAC

JOHNSON COUNTY ADULT DETENTION CENTER, et al.,

Defendants.

ORDER

On October 25, 2006, this court entered an Order dismissing this civil rights action after plaintiffs failed to respond to its order dated October 2, 2006, to show cause why the complaint should not be dismissed for the reasons stated therein, including failure to adequately plead exhaustion of administrative remedies and failure to state a claim. After the action was dismissed, plaintiff Overby filed a "Response" to the court's prior show cause order out of time. The court has considered this pleading, treats it as a Motion for Relief from Judgment or Order (Rule 60, Fed.R.Civ.P.) of dismissal, and finds it should be denied.

In this post-judgment motion, plaintiff Overby alleged he has had a "staff (sic) infection" and was "presently locked in his cell as a result, and had been transferred from 2A to a medium custody cell in 4B. He appears to allege he will try to fully exhaust his administrative remedies by asking questions and turning in requests, and will eventually forward proof of exhaustion to the court. Plaintiff was informed in the court's prior show cause order that under 42 U.S.C. 1997e(a), "No action **shall be brought** with respect to prison conditions under (any federal law) by a prisoner confined in any (correctional facility) until such administrative remedies as are available are exhausted." <u>Id</u>. (emphasis supplied). It appears from plaintiff Overby's allegations that he had not exhausted his administrative remedies prior to filing his complaint. Moreover, the court finds plaintiff failed to respond to the court's prior order in the time provided, and still has not addressed the deficiencies in the complaint found during screening. The court further finds that no substantial reason for his failure to timely or adequately respond to the court's show cause order has been alleged or shown.

IT IS THEREFORE ORDERED that plaintiff Overby's Motion for Relief from Judgment (Doc. 6) is denied.

IT IS SO ORDERED.

Dated this 21st day of November, 2006, at Topeka, Kansas.

<u>s/Sam A. Crow</u> U. S. Senior District Judge

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