

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

ANTHONY DEWAYNE WALKER
ADC #107683

PLAINTIFF

v.

No. 2:20-cv-126-DPM-JTK

JOHN A. MUNN, Lieutenant, EARU;
DARLINE THURSON, Doctor, Mental
Health Counselor, EARU; and ALICIA
WILLIAMS, Sergeant, EARU

DEFENDANTS

ORDER

On *de novo* review, the Court partly adopts and partly declines the partial recommendation, *Doc. 42*. FED. R. CIV. P. 72(b)(3).

The Court adopts the recommendation as to Defendant Williams and overrules Walker's objections, *Doc. 43*. Walker's naming Williams as a witness during his grievance appeal wasn't sufficient to exhaust his failure to protect claim against her. He did not name her in the initial grievance. And in his appeal, he did not say or imply that she could have intervened but didn't. Walker said simply that Defendant Williams saw the encounter.

The Court sustains Thurson's objections, *Doc. 44*, and declines the recommendation as to her. Thurson has attached more grievance records to her objections. *Doc. 44-1 & 44-2*. These papers show that Walker is right: he didn't receive timely Step Two responses to any of the relevant mental health grievances. *Doc. 44-2*. But Thurson is also

right: the ADC grievance procedure covers that situation. If an inmate doesn't get a timely response at Step Two, then he can appeal without a response using the acknowledgment form. *Doc. 28-3 at 11-12*. Walker received acknowledgment forms for each of these grievances. *Doc. 2 at 19-22*. Each form gave a date by which he should receive a response. *Ibid*. But when the prison failed to respond by each of those deadlines, Walker didn't proceed to the next step as the grievance procedure required. He therefore failed to exhaust his administrative remedies.

Williams and Thurson's motion for summary judgment, *Doc. 26*, is granted. Walker's claims against them are dismissed without prejudice for failure to exhaust.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

22 December 2020