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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

EDWARD B. SPENCER,

Plaintiff and Appellant,

v.

G.W. WARD, as Correctional Officer, etc., et al.,

Defendants and Respondents.

F063495

(Super. Ct. No. 11C0162)

**OPINION**

APPEAL from an order of the Superior Court of Kings County. James T. LaPorte,  
Judge.

Edward B. Spencer, in pro. per., for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

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Edward B. Spencer is an inmate at the California Substance Abuse Treatment Facility and State Prison. He filed a petition for writ of mandate in the trial court seeking an order requiring prison staff to comply with various regulations related to inmate complaints and appeals. The trial court denied the writ, concluding that Spencer had failed to exhaust his administrative remedies.

## **FACTUAL AND PROCEDURAL SUMMARY**

In his petition, Spencer alleged that he was an inmate and that he submitted an appeal on January 9, 2011. He alleged that prison officials were required to respond within 15 days. They failed to do so. On January 27, 2011, Spencer submitted a duplicate appeal.

On March 1, 2011, Spencer submitted a request for interview to the appeals coordinator. Apparently, a correctional officer interpreted this request as being related to a different appeal. Spencer then filed the writ of mandate in the trial court. The trial court denied the writ. Spencer appeals from the denial of his writ of mandate.

## **DISCUSSION**

Spencer does not allege his appeal was improperly denied, but merely argues that prison officials failed to follow proper procedures in responding to his complaint.

The procedures for handling inmate appeals are set forth in California Code of Regulations, title 15, division 3, chapter 1, article 8, commencing with section 3084.<sup>1</sup> Section 3084.1 explains that the appeal process is intended to provide inmates with a remedy for grievances and to provide an administrative process for reviewing departmental policies and decisions. Subdivision (b) of section 3084.1 provides that all appeals are subject to a third level of review, and the administrative process is not exhausted until that third level of review is completed. Subdivision (f) of section 3084.1 limits inmates to one appeal every 14 days, unless the appeal is accepted as an emergency appeal.

Appeals are required to be submitted on California Department of Corrections and Rehabilitation (the Department) form No. 602. (§ 3084.2.) First and second level appeals must be submitted to the appeals coordinator at the institution. (*Id.*, subd. (c).) If

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<sup>1</sup>All further references to sections are to California Code of Regulations, title 15, unless otherwise indicated.

the inmate is dissatisfied with the outcome of the second level appeal, he or she may submit the appeal for a third level of review. (*Id.*, subd. (d).) The third level appeal must be mailed to the third level appeals chief. (*Ibid.*)

Each institution is required to designate a staff position as an appeals coordinator (§ 3084.5, subd. (a)), and he or she is required to screen all appeals (*Id.*, subd. (b)). An appeal may be rejected or cancelled for specific reasons. (§ 3084.6.) With a few exceptions not pertinent here, appeals are submitted and screened at the first level. (§ 3084.7, subd. (a).) A face-to-face interview is required. (*Id.*, subd. (e).) The second level of review is for appeals denied or not otherwise resolved to the inmate's satisfaction at the first level. (*Id.*, subd. (b).) The original appeal must be returned to the prisoner with a written response to the issue and an explanation for the decision at both the first and second levels. (*Id.*, subd. (h).) Specific time limits are established for filing and responding to inmate appeals. (§ 3084.8.)

The second level must be completed before the inmate may proceed to the third level appeal. (§ 3084.7, subd. (b).) The third level of appeal is for appeals not resolved to the inmate's satisfaction at the second level. (*Id.*, subd. (c).)

Prior to seeking a writ of mandate from the trial court, the inmate is required to exhaust his administrative remedies, i.e., he must pursue his appeal through the third level of appeal. (*Wright v. State of California* (2004) 122 Cal.App.4th 659, 664-665 (*Wright*).) Indeed, the trial court is without jurisdiction to hear a case where the administrative remedies have not been exhausted. (*Ibid.*)

This was the rule applied by the trial court here to deny Spencer's petition. This conclusion is supported by the record. Although difficult to discern, it appears that Spencer filed his first level of review on January 9, 2011. He resubmitted it on January 27, 2011, because he had not received a response. According to the petition, Spencer had not received a response to the first level of review when he filed his petition.

As explained in *Wright*, “the Department’s delay does not excuse Wright’s failure to exhaust his available administrative remedies.... The remedy for an unreasonable delay is not a suit for damages, but a writ of mandate ordering the Department to perform its duty by completing the review. [Citation.]” (*Wright, supra*, 122 Cal.App.4th at p. 667.)

Here, Spencer filed a petition for a writ of mandate that would order the Department to comply with the requirements of section 3048.8. However, he has not alleged that he sought review at the second or third level or that the time for completing these reviews had expired. Accordingly, he has not exhausted his administrative remedy.

Spencer’s brief is as difficult to understand as his petition. He apparently has simply copied numerous portions of other briefs without modification, making many of his arguments inapplicable.

He has alleged, however, that he was not required to exhaust his administrative remedies. To support his argument, he cites four cases, including *Wright*. We have reviewed *Wright*, and it provides no support for Spencer’s arguments. Spencer also cites *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, which also fails to support his argument. The issue in *Brown* was whether newly enacted administrative appeal procedures complied with the petitioner’s right to due process.

Spencer has not presented any argument to explain why the procedure set forth in the regulations is inadequate or violates his right to due process. His not receiving a timely response at the first level did not excuse him from proceeding to the second level and, if no response was received, then to the third level. He simply chose to ignore these requirements.

Spencer also cites *People ex rel. Dept. of Conservation v. Triplett* (1996) 48 Cal.App.4th 233. This court concluded in *Triplett* that in the circumstances presented in the case, which dealt with the cancellation of a Williamson Act contract, no

administrative remedies were available to the plaintiff. Here, unquestionably, Spencer had administrative remedies that he simply ignored.

Finally, Spencer cites *California Correctional Peace Officers Assn. v. State Personnel Board* (1995) 10 Cal.4th 1133, which addresses the issue of remedies available to the plaintiff when the State Personnel Board (the Board) fails to act within the time limits set by statute. The Supreme Court concluded the failure to act in a timely manner did not deprive the Board of jurisdiction, but it did permit the plaintiff to seek a writ of mandate compelling the Board to act by a specific date or to seek a writ of mandate seeking to overturn the adverse personnel decision.

This case does not aid Spencer because the plaintiff did not have any other administrative remedy, while Spencer retained the second and third levels of review before his administrative remedy was exhausted.

#### **DISPOSITION**

The order is affirmed.

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CORNELL, Acting P.J.

WE CONCUR:

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GOMES, J.

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KANE, J.