

FILED IN CHAMBERS
U.S.D.C. Atlanta

SEP 29 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

JAMES N. HATTEN, Clerk
Deputy Clerk

ATLANTA DIVISION

UNITED STATES OF AMERICA : CRIMINAL ACTION NO.
 :
 v. : NO. 1:04-CR-568-CC-1
 :
 LINDA C. SCHRENKO :

ORDER

Pending before the Court are: defendant Linda Schrenko's "Motion For An Order To Schedule Necessary Testing And To Move Prisoner Linda Schrenko to Grady Memorial Hospital For The Said Testing" ("Motion") [Doc. 488]; and the Government's opposition to that Motion and request to vacate the Order entered by the Court, on September 16, 2011, directing certain testing to be provided to defendant Schrenko at Emory University Hospital. [Docs. 495 and 500].

The Court, having considered the submissions of the parties and arguments of counsel, hereby enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Defendant Schrenko currently is in the custody of the U.S. Bureau of Prisons ("BOP") and has been incarcerated at the Federal Correctional Complex ("FCC") in Coleman, Florida ("FCC Coleman"). FCC Coleman is located in Sumter County, Florida, which is in the U.S. judicial district for the Middle District of

Florida.

2. The U.S. Bureau of Prisons ("BOP") has established an administrative process by which prisoners in the custody of the BOP shall challenge conditions of confinement. 28 C.F.R. § 542.10, *et seq.* The inmate commences the administrative process by first presenting an issue of concern informally to staff. 28 C.F.R. § 542.13. If informal resolution procedures fail to achieve sufficient results, the inmate must first file form BP-9 with the warden of his or her institution. 28 C.F.R. § 542.14. If dissatisfied with that response, the inmate can appeal, using form BP-10, to the BOP regional office for the geographic region in which the inmate's institution of confinement is located. 28 C.F.R. § 542.15(a). If the regional office denies relief, the inmate can further appeal, using form BP-11, to the General Counsel in the Bureau of Prisons Central Office. 28 C.F.R. § 542.15(a). Administrative remedies have not been exhausted until the inmate's claim has been filed at all levels and has been denied at all levels.

3. On September 7, 2011, defendant Schrenko submitted to the Court and hand-delivered to counsel for the Government her "Motion For An Order to Schedule Necessary Testing And To Move Prisoner Linda Schrenko to Grady Memorial Hospital For The Said Testing." [Doc. 488].

4. In that Motion, defendant alleges that she is being denied proper medical treatment at FCC Coleman and that the medical treatment at FCC Coleman is "insufficient to protect her from one or more potential medical catastrophes." [Doc. 488 - ¶¶ 1 and 3]. Defendant Schrenko requests that she remain in the Northern District of Georgia until such time as she can complete a series of medical tests "that are necessary to determine Ms. Schrenko's state of current health and, in so doing, to determine the minimum necessary to keep her alive." [Doc. 488 - ¶ 4].

5. By Order entered September 16, 2011, the Court directed that defendant Schrenko be transported to Emory University for medical testing which was to be completed on or before September 30, 2011. [Doc. 491]. By that Order the Court further directed the Government to submit on or before September 30, 2011, any response to defendant's Motion seeking medical testing. [Doc. 491].

6. On September 26, 2011, the Government filed its opposition to defendant's Motion for medical testing and requested the Court to vacate its Order directing such testing to be provided to defendant Schrenko in Atlanta, Georgia. [Docs. 495 and 500]. On September 27, 2011, defendant Schrenko filed her reply brief in support of her Motion for medical testing. [Doc. 497].

7. On September 27, 2011, the Court conducted a telephone conference with counsel for the parties. Participating in that

conference were defendant Schrenko's attorney Robert L. Barr, Jr., Assistant U.S. Attorney Daniel A. Caldwell, and Assistant U.S. Attorney Cynthia B. Smith. [Doc. 499].

CONCLUSIONS OF LAW

1. The Prison Litigation Reform Act ("PLRA") provides that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983] or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a).

2. The Court has no discretion to waive this exhaustion requirement. *Bryant v. Rich*, 530 F.3d 1368, 1373 (11th Cir. 2008). "[T]he courts cannot simply waive those requirements where they determine they are futile or inadequate. Such a determination would impose an enormous loophole in the PLRA, which Congress did not intend." *Alexander v. Hawk*, 159 F.3d 1321, 1326 (11th Cir.1998).

3. Defendant Schrenko has failed to comply with the PLRA and exhaust administrative remedies established by the BOP prior to seeking relief with this Court in an action challenging the quality of her medical care provided at FCC Coleman.

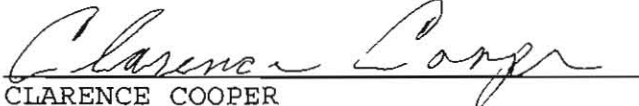
WHEREFORE, the Court having made the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the "Motion For An Order to Schedule Necessary Testing And To Move Prisoner Linda Schrenko to Grady Memorial Hospital For The Said Testing" filed by defendant Schrenko on September 7, 2011, is denied;

IT IS FURTHER ORDERED that the Order entered on September 16, 2011, that directed defendant Schrenko to be produced for medical testing at Emory University Hospital in Atlanta, Georgia, and to remain in the Northern District of Georgia until such testing was completed on or before September 30, 2011, is vacated; and

IT IS FURTHER ORDERED that the United States Marshal for the Northern District of Georgia or her designee is directed to return defendant Schrenko from the Northern District of Georgia to the custody of the Warden for FCC Coleman.

SO ORDERED this 29th day of September, 2011


CLARENCE COOPER
SENIOR UNITED STATES DISTRICT JUDGE

Presented by:
/s/ Daniel A. Caldwell
DANIEL A. CALDWELL
ASSISTANT U.S. ATTORNEY
Georgia Bar No. 102510