Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANT *PRO SE*:

CLYDE PIGGIE
Carlisle, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CLYDE PIGGIE,	)	
	)	
Appellant/Plaintiff,	)	
	)	
vs.	)	No. 77A05-0906-CV-325
	)	
ALAN FINNAN, *et al.*,	)	
	)	
Appellees/Defendants.	)	

APPEAL FROM THE SULLIVAN CIRCUIT COURT
The Honorable Robert E. Springer, Judge
The Honorable Ann S. Mischler, Magistrate
Cause No. 77D01-0904-PL-136

October 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Plaintiff Clyde Piggie appeals from the trial court's refusal to file his civil rights complaint, pursuant to Indiana Code section 34-58-1-2 (2008), against Appellees/Defendants Alan Finnan and sixteen others, all apparently employees and officials of the Department of Correction. Concluding that Piggie has not established that he has exhausted his administrative remedies, we affirm.

FACTS

On April 23, 2009, Piggie submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 to the Sullivan Circuit Court. The complaint named a total of seventeen defendants and generally alleged various retaliatory actions by prison employees and officials and denial of medical care in violation of the Eighth Amendment prohibition against cruel and unusual punishment. On April 30, 2009, Magistrate Ann S. Mischler, in an order signed by Judge Robert E. Springer, determined pursuant to Indiana Code section 34-58-1-2 that Piggie's claim was "frivolous in that it does not have an arguable basis in the law and may not state a claim upon which relief may be granted[.]" Appellant's App. p. 20. The trial court determined, *inter alia*, that Piggie had not provided proof that he had exhausted his administrative remedies before submitting his complaint. The order also informed Piggie that if he could submit proof of exhaustion within thirty days that the complaint would be reinstated to the active docket.

On May 11, 2009, Piggie filed a "Motion to Reconsider" in which he claimed to have exhausted his administrative remedies, which motion the trial court denied on May 13, 2009. On May 14, 2009, Piggie filed a "Plaintiff's Response to Court Order" in which he again

claimed to have exhausted his remedies and to which he attached several exhibits he claimed established this. On May 22, 2009, the trial court reaffirmed its denial of Piggie's "Motion to Reconsider."

DISCUSSION AND DECISION

Piggie contends that the trial court erred in (1) dismissing his retribution claim, (2) declining to file his denial of medical care claim, (3) concluding that he had not exhausted his administrative remedies, (4) declining to file his due process claims, (5) concluding that the defendants were immune from liability, (6) allowing a magistrate to enter rulings in his case without his consent, and (7) declining to file his civil rights complaint. We need only address two of Piggie's claims.

I. Whether the Magistrate Could Enter Rulings Without Piggie's Consent

Piggie contends that any rulings made by Magistrate Mischler are void because he did not consent to her participation in his case. To support his argument, Piggie relies on federal authority that parties must consent in writing to a magistrate. *See Aldrich v. Bowen*, 130 F.3d 1364, 1365 (9th Cir. 1997) (citing 28 U.S.C. § 636(c)(1) and Fed. R. Civ. P. 73(b)). Piggie, however, points to no authority suggesting that such consent is required in Indiana state courts, and we are aware of none. Piggie has failed to establish that Magistrate Mischler's participation in his case was improper.

II. Whether the Trial Court Properly Declined to File Piggie's Complaint

Standard of Review

Indiana Code section 34-58-1-1 (2008) provides that "[u]pon receipt of a complaint or petition filed by an offender, the court shall docket the case and take no further action until the court has conducted the review required by section 2 of this chapter." Section 2, in turn, provides in relevant part as follows:

> (a) A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim:
> (1) is frivolous;
> (2) is not a claim upon which relief may be granted; or
> (3) seeks monetary relief from a defendant who is immune from liability for such relief.
> (b) A claim is frivolous under subsection (a)(1) if the claim:
> (1) is made primarily to harass a person; or
> (2) lacks an arguable basis either in:
> (A) law; or
> (B) fact.

Ind. Code § 34-58-1-2. If a trial court determines that a claim may not proceed under section 2, "the court shall enter an order … explaining why the claim may not proceed; and … stating whether there are any remaining claims in the complaint or petition that may proceed." Ind. Code § 34-58-1-3 (2008).

In reviewing the dismissal of an offender's claim, complaint, or dismissal pursuant to Indiana Code section 34-58-1-2, we employ a *de novo* standard of review. *Smith v. Huckins*, 850 N.E.2d 480, 484 (Ind. Ct. App. 2006). "Like the trial court, we look only to the well-pleaded facts contained in the complaint or petition as well as the fact that a judicial record dismissing a case exists." *Id*. "Further, we determine whether the complaint or petition

contains allegations concerning all of the material elements necessary to sustain a recovery under some viable legal theory." *Id*.

Here, Piggie's complaint did not contain any allegations concerning one of the requirements of any § 1983 claim challenging prison conditions, namely that he had exhausted his administrative remedies. As we recently explained, "Indiana state courts now require exhaustion of administrative remedies before inmates may file § 1983 claims related to prison conditions." *Abdul-Wadood v. Batchelor*, 865 N.E.2d 621, 624 (Ind. Ct. App. 2007), *trans. denied*. Piggie's failure to allege, much less establish, exhaustion of administrative remedies in his original complaint rendered his allegations claims upon which no relief could be granted, and the trial court's refusal to file his complaint was therefore proper. *See id*. at 625.

Moreover, it makes no difference that Piggie later attempted to correct this deficiency by filing a "Motion to Reconsider" and then a "Plaintiff's Response to Court Order," to which was attached materials purporting to establish exhaustion of administrative remedies. We have concluded that "once a trial court determines that a claim may not proceed [pursuant to section 34-58-1-2], the offender cannot amend his complaint." *Smith*, 850 N.E.2d at 483. "To allow amendment after dismissal would be counterproductive to the legislative intent of cutting off meritless or frivolous lawsuits." *Id*.

Believing, as we do, that Piggie's submissions after the trial court's initial order were essentially attempts to amend his original complaint, we reach the same result. While we acknowledge that Piggie's later submissions were made with the trial court's permission,

Smith is clear that an offender *cannot* amend his complaint once the trial court decides not to file it. Not only is a permissive amendment not contemplated in either *Smith* or section 34-58-1-2, permissive amendments would run just as counter to the clear legislative intent behind section 34-58-1-2 as any other kind. We conclude that the trial court properly declined to file Piggie's complaint.[1]

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.

[1] In any event, because Piggie failed to include any evidence regarding Department of Correction grievance procedures in any of his submissions to the trial court, there is no indication that he exhausted his remedies in any of his myriad grievances.