

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted March 22, 2024*

Decided March 29, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-2855

BRIAN MAUS,
Plaintiff-Appellant,

v.

SCOTT PAGEL,
Defendant-Appellee.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 22-CV-135

Nancy Joseph,
Magistrate Judge.

ORDER

Brian Maus, a Wisconsin prisoner, appeals the summary judgment entered against him based on his failure to exhaust administrative remedies on his constitutional claims. *See* 42 U.S.C. § 1983. Because the undisputed facts show that Maus

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

did not comply with the prison's grievance procedures in the time and manner required of him, *see* 42 U.S.C. § 1997e(a), we affirm.

Maus alleges that, while incarcerated at Green Bay Correctional Institution, he was given used socks to wear that lacked elastic and kept falling to his toes. When his request for new socks was rebuffed by correctional officer Scott Pagel, Maus filed an inmate complaint over what he regarded as the denial of proper clothing. This complaint was dismissed, and he did not appeal.

Maus then filed another inmate complaint in response to disciplinary proceedings that arose out of a conduct report he received from Pagel. Maus had been found guilty of disrespect and threats after laughing at a televised report about a recent assault on correctional officers at the prison. In his inmate complaint, Maus alleged that the hearing officer misrepresented his testimony at the hearing. Maus also characterized the conduct report as a "retaliation conduct report." The inmate complaint was rejected as outside of the scope of the inmate-complaint review system. Maus appealed that ruling, arguing that Pagel prepared the conduct report out of "pure retaliation." This appeal was rejected as untimely.

On the same day he filed the second inmate complaint, Maus filed a third complaint. In it, he repeated his charge that Pagel retaliated against him by filing the conduct report, and he added that he had the right "to laugh about your cops getting stabbed." This complaint too was rejected, as was Maus's appeal—again on untimeliness grounds.

Maus then brought this § 1983 suit against Pagel and various prison officials for denying him adequate clothing, rejecting his inmate complaints, conspiring against him, and retaliating against him. Maus reiterated that Pagel wrote him up in the conduct report in retaliation for filing the prior inmate complaint about the socks.

The district court screened Maus's complaint, *see* 28 U.S.C. § 1915A, and allowed him to proceed on claims that Pagel (1) had subjected him to conditions of confinement that violated the Eighth Amendment by making him—for months—wear socks that would not stay on his feet; and (2) had issued a conduct report in retaliation for his filing an inmate complaint over the socks in violation of the First Amendment.

A magistrate judge, presiding with the parties' consent, *see* 28 U.S.C. § 636(c), later granted Pagel's motion for summary judgment for lack of exhaustion of administrative remedies. *See* 42 U.S.C. § 1997e(a). Regarding Maus's Eighth

Amendment claim, the judge found it undisputed that Maus did not appeal his dismissed inmate complaints. As for Maus's First Amendment retaliation claim, the judge determined that Maus's inmate complaints did not adequately put the prison on notice that Pagel had retaliated against him for filing the inmate complaint about the socks. The judge explained that while Maus's inmate complaints identified the retaliatory act (the conduct report), they did not sufficiently identify the protected conduct that provoked the retaliation.

On appeal, Maus challenges the magistrate judge's exhaustion findings. But the judge's analysis here was correct. Under 42 U.S.C. § 1997e(a), no complaint against prison conditions may proceed unless there is "proper" exhaustion of administrative remedies, *Woodford v. Ngo*, 548 U.S. 81, 93 (2006), the boundaries of which are defined by state law. *Jones v. Bock*, 549 U.S. 199, 218 (2007). To exhaust, a prisoner must follow the state's administrative rules about inmate complaints. *See Schillinger v. Kiley*, 954 F.3d 990, 995 (7th Cir. 2020) (explaining the Wisconsin scheme for exhaustion). As the judge rightly explained, Maus did not exhaust his conditions-of-confinement claim because he did not administratively appeal its denial to a review board. *See* WIS. ADMIN. CODE DOC §§ 310.05, 310.13, 310.14 (2002) (amended 2018). The judge also rightly concluded that Maus did not exhaust his First Amendment retaliation claim because his inmate complaints failed to "clearly identify the issue." *Id.* § 310.09(1). Because Maus failed to identify the first inmate complaint over the socks as the precipitating event for Pagel's alleged retaliation, Maus did not put the prison on notice about what protected conduct motivated Pagel to retaliate against him. *See Bowers v. Dart*, 1 F.4th 513, 517–18 (7th Cir. 2021) (no exhaustion where there was discrepancy between inmate's grievance and federal complaint over timing when correctional officer failed to protect him).

We have considered Maus's other arguments, and none has merit.

AFFIRMED