

NONPRECEDENTIAL DISPOSITION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 December 10, 2024*

Decided December 20, 2024

Before

DIANE S. SYKES, *Chief Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-2924

ANTHONY A. MASSIE,
Plaintiff-Appellant,

v.

LASHONDA GRAY[†]
Defendant-Appellee.

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

No. 21-cv-1348

Stephen C. Dries,
Magistrate Judge.

ORDER

* 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).

† Sergeant Gray's first name does not appear anywhere in the record, but we have updated the caption based on publicly available information. Counsel for the defendant shall alert the court by motion if the defendant is misidentified. We also remind counsel that litigating under a pseudonym is not permitted without leave of court and requires an extraordinary justification. *See Doe v. Trustees of Indiana Univ.*, 101 F.4th 485, 492 (7th Cir. 2024).

Anthony Massie appeals the judgment against him based on failure to exhaust his administrative remedies properly before suing jail officials for violating his constitutional rights as a pretrial detainee. 42 U.S.C. § 1983. Because the record shows that Massie did not properly follow the jail's grievance procedures as required by the Prison Litigation Reform Act, 28 U.S.C. § 1997(e), we affirm.

We construe the facts and draw all reasonable inferences in favor of Massie, the nonmoving party. *Williams v. Ortiz*, 937 F.3d 936, 941 (7th Cir. 2019). On August 16, 2021, while Massie was jailed at the Kenosha County Detention Center, another inmate threw scalding coffee at Massie through the bars of his cell, burning his face. Sergeant Gray, the supervisory officer on duty, witnessed the attack on a video feed. Sergeant Gray did not take Massie to the medical unit or direct anyone else to do so.

The Kenosha County Sheriff's Department, which operates the jail, has a detainee grievance system. It requires prisoners to submit a written grievance within 7 days of the incident that is the subject of the complaint, and officials must respond within 7 days of receipt. Grievances that do not comply with procedure are rejected. An inmate must appeal an unfavorable response within 72 hours of receiving it. These rules are posted in the housing units, and an explanation of the grievance and appeal process is played daily throughout the jail on closed-circuit televisions. The rules are also available on the tablet issued to each inmate.

On August 17, Massie submitted a handwritten grievance form recounting that he had reported another inmate for hoarding pills and giving them to other inmates, which led to the hot-coffee attack as retribution. Massie asked for a "justice response and due process investigation." He also stated that he had not been able to speak with Sergeant Gray, who wrote the incident report, and that she had not escorted him to the medical department. The complaint form was rejected and returned to him with red writing telling him to resubmit the grievance through the electronic kiosk. Another handwritten notation stated: "What are you grieving?"

Massie submitted a new grievance dated August 18 in which he requested an investigation into the coffee-throwing incident and stated: "I asked to see the nurse but was not removed from my cell at all." An officer logged the grievance electronically, and Massie received a response exonerating Gray on August 19, with the rationale that staff from the health services unit had come to Massie's cell to assess him. The response stated that Massie could administratively appeal the decision within 72 hours. Massie states that he appealed, but the jail has no record of receiving any appeal.

Over his time at the jail, Massie submitted numerous handwritten grievances about the kiosk being defective and about the jail's failure to accept or respond to handwritten grievances. These grievances were rejected and returned to him: some explaining that he was making a request, not stating a grievance, some asking for clarification of the subject of the grievance, and some concluding that his complaints could not be addressed through the grievance system. *See* WIS. ADMIN. CODE DOC § 310.10(6). None of these grievances related to Gray's alleged failure to get medical attention for Massie on August 16, 2021.

Massie filed this suit under § 1983 against the county sheriff and multiple correctional officers. After screening the complaint, the district judge allowed Massie to proceed on a claim against Gray for ignoring his need for medical treatment after getting scalded with coffee. The parties then consented to the jurisdiction of a magistrate judge. *See* 28 U.S.C. § 636(c). Gray moved for summary judgment on the ground that Massie had failed to exhaust his administrative remedies. The magistrate judge entered summary judgment for Gray and rejected Massie's argument that the grievance process was unavailable to him.

On appeal, Massie argues that the magistrate judge erred in concluding that he failed to exhaust his administrative remedies because jail officials prevented him from accessing the grievance process. We review *de novo* the grant of summary judgment based on a failure to exhaust. *Williams*, 937 F.3d at 941.

The Prison Litigation Reform Act requires "proper" exhaustion of administrative remedies before actions can be brought with respect to prison conditions. *Woodford v. Ngo*, 548 U.S. 81, 93 (2006). This means that inmates must follow the facility's grievance process. *Jones v. Bock*, 549 U.S. 199, 218 (2007). Exhaustion is not required, though, if a grievance process is not "available." *Ross v. Blake*, 578 U.S. 632, 642 (2016). However, "when the prisoner causes the unavailability of the grievance process," such as by not filing a grievance in a timely manner, "the process is not unavailable but rather forfeited." *Kaba v. Stepp*, 458 F.3d 678, 684 (7th Cir. 2006). Because failure to exhaust is an affirmative defense, the defendant must show that administrative remedies were available to Massie. *Gooch v. Young*, 24 F.4th 624, 627 (7th Cir. 2022).

Here, the judge properly concluded that Massie did not exhaust his administrative remedies. Strict compliance with the grievance process is required for proper exhaustion, and so Massie had to complete each step prescribed by the jail's

regulations, even if that was not his preferred method. *See Jones*, 549 U.S. at 218. The response to Massie's August 17 complaint told him to submit the grievance electronically and instructed him to clarify the nature of his complaint. There is no evidence that Massie resubmitted this grievance using the kiosk system or that he clarified his grievance as directed. Therefore, Massie did not exhaust the August 17 grievance.

Massie also did not exhaust the August 18 grievance because he failed to appeal its denial. WIS. ADMIN. CODE DOC §§ 310.05, 310.09. The prison put forth evidence that it did not receive any appeal of the denial of the August 18 grievance. Massie asserts on appeal that he submitted an appeal and never got an answer, but this assertion is not supported by the record. In his declaration, Massie attested to submitting an appeal (though it is not clearly linked to the August 18 grievance) that was rejected but not that he re-submitted it. Therefore, Massie did not raise a dispute as to whether he appealed the denial of the August 18 grievance at each required level.

Nor does Massie demonstrate that remedies were unavailable. He contends that the kiosks were frequently inaccessible (such as when Massie was in segregation) or malfunctioning, as demonstrated by his frequent written complaints about this to jail staff. But he did not attest that those problems with the kiosk thwarted any attempt to submit grievances or appeals related to the coffee-throwing incident. Moreover, the jail responded to the August 18 grievance even though it was handwritten, and Massie admits that he received the response.

As to other grievances that Massie hand-wrote and says were ignored, he does not contend that any of them related to the subject matter of this lawsuit. His general frustration with the kiosk system did not make the process unavailable. He did not establish that the system (1) could not provide relief or (2) was so opaque as to be incapable of use; or that (3) officials actively prevented inmates from using it. *Ross*, 578 U.S. at 643; *see Reid v. Balota*, 962 F.3d 325, 330 (7th Cir. 2020). Indeed, the responses to both the August 17 and August 18 grievances instructed Massie about what to do next, and he did not follow the instructions either time.

AFFIRMED