

NONPRECEDENTIAL DISPOSITION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 January 7, 2025*

Decided January 21, 2025

Before

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1780

CHALLIE A. GRAY,
Plaintiff-Appellant,

v.

JOHN POOR, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Southern District of
Indiana, Indianapolis Division.

No. 1:23-cv-00694-MPB-TAB

Matthew P. Brookman,
Judge.

ORDER

Challie Gray, an Indiana prisoner, appeals the judgment against him based on a failure to exhaust administrative remedies before suing prison officials under 42 U.S.C. § 1983. Because Gray did not comply with the prison's grievance procedures in the required manner, *see* 42 U.S.C. § 1997e(a), we affirm.

* 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).

We construe the record in favor of Gray, the non-movant. *See Williams v. Rajoli*, 44 F.4th 1041, 1045 (7th Cir. 2022). While Gray was incarcerated at Pendleton Correctional Facility in Indiana, the toilet in his cell began to overflow onto the floor. John Poor, a correctional officer stationed nearby, initially ignored Gray's calls for help. Eventually, Poor and another officer, Richard Fleury, opened Gray's cell door. When Gray expressed anger about the situation, Poor remarked that Gray was lucky that he had not been "slammed." Jamie Downs, a third officer, helped Poor and Fleury remove Gray from his cell. While escorting Gray, Fleury and Downs broke his left wrist, and Downs used a stun weapon on him. Gray was hospitalized after the encounter.

Relevant for this appeal, the Indiana Department of Correction's grievance policy consists of three steps, requiring a prisoner to: (1) file a grievance after attempting to resolve the issue informally; (2) if the grievance is denied, file an appeal to the warden or the warden's designee; and (3) if the appeal is denied, file a second-level appeal to the Department's grievance manager. *See* IND. DEP'T OF CORR., ADMIN. P. NO. 00-02-301, § IV. To submit that second-level appeal, the prisoner must check a "Disagree" box on the form denying the first appeal, sign the form, and submit it to the grievance specialist, who then enters the completed form into a database for the grievance manager's review. *Id.* § XII.

Gray filed a grievance the day after the incident. After that grievance was denied, he appealed on December 6, and his appeal was denied on January 25, 2022. According to the prison's records, Gray did not complete the final step of the grievance process by appealing that denial to the Department's grievance manager. There is no record that the form was submitted to the grievance specialist.

Gray later brought this suit against Poor, Fleury, and Downs. *See* 42 U.S.C. § 1983. The officers moved for summary judgment on the ground that Gray had failed to exhaust administrative remedies. *See* 42 U.S.C. § 1997e(a). The officers submitted the Department's records of Gray's grievances and an affidavit from Pendleton's grievance specialist, who attested to the records' accuracy. In his response, Gray stated that he *did* submit the second-level appeal, but the grievance specialist (who was responsible for transmitting the appeal to the grievance manager) did not file it. He purported to make this statement "under penalty of perjury" but did not sign or date the declaration.

The district court granted the officers' motion for summary judgment, ruling that Gray failed to exhaust his administrative remedies because he did not complete the second-level appeal. The district court declined to construe Gray's statement as an unsworn declaration under 28 U.S.C. § 1746 because Gray failed to sign it; therefore, he

lacked admissible evidence to support his argument that he lacked an “available” remedy under § 1997e(a) because of the grievance specialist’s dereliction.

On appeal, Gray challenges the summary judgment ruling, which we review de novo. *See Williams*, 44 F.4th at 1045. Gray argues that he had no “available” remedy because the grievance specialist failed to submit his appeal to the Department’s grievance manager as required. *See* IND. DEP’T OF CORR., ADMIN. P. NO. 00-02-301, § XII. Gray correctly observes that a prisoner need not exhaust a remedy that is unavailable, “such as when ‘prison employees do not respond to a properly filed grievance or otherwise use affirmative misconduct to prevent a prisoner from exhausting.’” *Williams*, 44 F.4th at 1045 (quoting *Dole v. Chandler*, 438 F.3d 804, 809 (7th Cir. 2006)).

But Gray produced no admissible evidence that the grievance specialist failed to submit to the grievance manager an appeal that Gray properly filed. Gray does not challenge, let alone demonstrate error in, the district court’s decision that his unsigned and undated filing was not an unsworn declaration under 28 U.S.C. § 1746. And no other evidence in the record supports his assertion that he submitted a second-level appeal. We therefore have no reason to reverse the district court’s decision.

AFFIRMED