NONPRECEDENTIAL DISPOSITION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 18, 2024*
Decided February 5, 2025

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-1951

JAMES GILMAN,
Plaintiff-Appellant,

v.

SAMUEL BYRD, et al.,
Defendants-Appellees.

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

No. 2:23-cv-00082-MPB-MKK

Matthew P. Brookman,
Judge.

O R D E R

James Gilman, 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. Gilman's claim is based on prison medical staff allegedly ignoring his severe illness until he required emergency hospitalization and surgery for what turned out to

* 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).

be an abdominal abscess. Gilman established that the prison's grievance process could not provide him with any form of personalized relief once outside doctors provided appropriate care for his condition. He therefore had no available remedy once he both became aware of the blatantly inappropriate care the prison had provided and was physically capable of using the grievance system. Therefore, we reverse the judgment and remand for further proceedings on the merits of the claim.

We construe the record in favor of Gilman, the non-movant. *See Williams v. Rajoli*, 44 F.4th 1041, 1045 (7th Cir. 2022). On November 22, 2022, while incarcerated at Wabash Valley Correctional Facility in Indiana, Gilman submitted a healthcare request because he sensed that something was wrong with him. Two days later, two nurses concluded that he was dehydrated, gave him intravenous fluids, and called Dr. Samuel Byrd, the prison's physician. Dr. Byrd ordered a blood draw, but Chelsea Pearson, the nurse responsible for lab work, did not complete it.

Gilman's health quickly deteriorated. The next day, his pain worsened, he could not eat or get out of bed without assistance, and he later complained about gastrointestinal distress. Several days later, Gilman reported stomach pain, nausea, and problems defecating. A nurse gave Gilman more intravenous fluids and medication to treat constipation. A few days later, a nurse practitioner who held a video appointment with Gilman recommended that Dr. Byrd examine Gilman immediately. Dr. Byrd ordered an x-ray of Gilman's abdomen, prescribed additional medication to treat constipation, and reordered the blood draw that Pearson had failed to complete. (Pearson eventually completed it on December 6.) Over the next several days, correctional officers who observed Gilman's dire condition requested to bring him to the infirmary, but nurses Leann Murry and Emily Enriquez would not allow it.

On December 11, Gilman's condition worsened further. Throughout the day, officers called the infirmary on Gilman's behalf, but nurses Murry, Barbara Riggs, and Kayla Kellums each refused to admit Gilman. After an officer insisted that Gilman was close to death, Gilman finally was admitted to the infirmary. Dr. Byrd observed that the results of the blood draw indicated a serious infection and then ordered that Gilman be taken by ambulance to the hospital immediately.

At the hospital, Gilman was diagnosed with an abdominal abscess and diverticulitis. The abscess was surgically removed along with two centimeters of his bowels. Gilman returned to the prison on December 31 and remained in the infirmary for post-surgical care until January 13, 2023.

On February 2, Gilman filed a grievance about the lack of medical care he had received before his emergency hospitalization. On the grievance form, Gilman stated

that "nothing [] can be done to prevent the Deliberate Indifference to my serious medical condition," and explained that he was filing the grievance solely to comply with administrative exhaustion requirements before he filed a lawsuit. The grievance officer rejected Gilman's grievance because it was filed more than ten business days after the incident at issue and failed to describe any relief sought. *See* IND. DEP'T OF CORR., ADMIN. P. NO. 00-02-301, § X.

Gilman then brought this suit against Dr. Byrd and nurses Pearson, Murry, Enriquez, Riggs, and Kellums—all employees of Centurion Health, the prison's medical-care contractor. The district court screened Gilman's complaint, *see* 28 U.S.C. § 1915A, and allowed him to proceed on his claim that Dr. Byrd and the nurses were deliberately indifferent to his diverticulitis and abdominal abscess in violation of his rights under the Eighth Amendment. *See* 42 U.S.C. § 1983.

The district court later granted the defendants' motion for summary judgment, ruling that Gilman failed to exhaust his administrative remedies. *See* 42 U.S.C. § 1997e(a). Relying on the Supreme Court's decision in *Booth v. Churner*, 532 U.S. 731 (2001), the district court first explained that Gilman was required to use the Indiana Department of Correction's grievance process even though his lawsuit seeks only monetary damages, which are not available through the administrative scheme. *See* 532 U.S. at 740–741. The court then reasoned that even if Gilman's poor health made the grievance process unavailable to him until he left the infirmary on January 13, he needed to properly exhaust within ten days thereafter. Because Gilman did not comply with the Department's grievance policy by filing a timely grievance or identifying good cause for his late filing, the district court continued, summary judgment for Dr. Byrd and the nurses was proper.

On appeal, Gilman challenges this decision, which we review de novo. *See Williams*, 44 F.4th at 1045. According to Gilman, the grievance process was not available from November 22 to December 11 (when he was unaware that he was receiving inadequate medical treatment) and from December 11 to January 13 (when he was physically incapacitated). Further, Gilman asserts, the grievance process was not available to him *after* January 13 because it was ineffectual: The only possible remedies were adequate medical treatment (which he had received, albeit belatedly, in the hospital) and monetary damages (which the grievance process cannot provide). Therefore, he contends, he was not required to use the process at all, and the lateness of the grievance he filed is immaterial.

Under 42 U.S.C. § 1997e(a), no complaint against prison conditions may proceed unless there is "proper" exhaustion of "available" 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). For a remedy to be an "available remedy" under the Prison Litigation Reform Act, it must be capable of providing the inmate "some relief." *Thornton v. Snyder*, 428 F.3d 690, 696 (7th Cir. 2005). Thus, a prisoner need not exhaust "where the relevant administrative procedure lacks authority to provide any relief or to take any action whatsoever in response to a complaint." *Booth*, 532 U.S. 731 at 736. "In short, if one has no remedy, one has no duty to exhaust remedies." *White v. Bukowski*, 800 F.3d 392, 395 (7th Cir. 2015).

In response to Gilman's argument that the grievance process was unavailable to him after he was hospitalized, the appellees assert that Gilman should have filed a grievance *before* he was hospitalized. But that argument lacks merit because Gilman stated in an affidavit that he was unaware of the inappropriate care he had received until his hospitalization, and he did not know that the nurses had refused correctional officers' requests to admit him to the infirmary. Gilman was receiving medical care until December 9, and, as far as he knew, that care was adequate. Only after he was hospitalized and subsequently spoke with doctors about his condition did he realize that he received the wrong care entirely. He therefore did not know before he was hospitalized that he had an "incident" to complain about under the grievance policy. *See Turnage v. Dart*, 16 F.4th 551, 552 (7th Cir. 2021) (applying comparable grievance policy). His "failure to file a grievance about the *risk* of injury" did not "permanently block[] any complaint about *actual* injury when the risk [came] to pass" when he was hospitalized. *See id.* And by then, the grievance process was unavailable to him because he was physically incapacitated at the hospital. *See Smallwood v. Williams*, 59 F.4th 306, 314 (7th Cir. 2023).

Further, even if Gilman had known about the nurses' refusal to admit him to the infirmary when it was happening between December 10 and 11, his deteriorating health would have made him physically incapable of filing a grievance at that time. *See id.* Gilman stated that he was in severe physical distress by December 11. According to Gilman, a correctional officer observed that Gilman was on death's door and would not survive the night without treatment. Therefore, the defendants did not meet their burden of showing that Gilman had reason to, or could have, filed a grievance before he was released from the hospital.

Gilman also contends that, once he was released from the hospital, he had received complete treatment for his medical issue, and therefore he could not obtain any relief through the grievance process. The district court concluded that there was some form of non-monetary relief that the prison could have provided Gilman after his

discharge from the infirmary, but it is unclear what that relief could be. The district court insinuated that a grievance could have led to policy changes within the prison. But that is not "relief" for Gilman personally. And Gilman was not required to serve as an ombudsman, seeking remedies like policy reforms or staff discipline that might be "helpful to other prisoners" but do nothing to improve his own situation with respect to the subject of the grievance. *See White*, 800 F.3d at 396. Indeed, the prison all but acknowledged this when it rejected the grievance because Gilman did not identify the "appropriate relief or remedy" sought, as required by the regulations. *See* IND. DEP'T OF CORR., ADMIN. P. NO. 00-02-301, § X(A)(7). Having obtained complete relief for his medical condition, and being unable to ask for damages, Gilman lacked any "appropriate relief or remedy" to suggest in his grievance, and therefore could not meet the requirements. Exhaustion is not required if the available system "operates as a simple dead end," such as when it is not "capable" of providing a remedy. *Ross v. Blake*, 578 U.S. 632, 643 (2016).

As Gilman argues, his case is similar to *White*, in which a pregnant detainee received inadequate medical treatment at a jail, resulting in her baby being born with birth defects. The jail officials in that case asserted that she had failed to exhaust, but we disagreed. *White*, 800 F.3d at 395–96. Although we ultimately rested our decision on the intricacies of the jail's administrative process, we also observed that it was too late for the detainee to obtain adequate medical treatment, and thus "[t]here was *no* remedy within the power of the jail to grant for the baby's birth defects." *Id.* at 395.

Further, the district court's reliance on *Booth* is inapt. There, the parties did not dispute that the grievance process at issue "ha[d] authority to take some responsive action with respect to the type of allegations Booth raise[d]." *Booth*, 532 U.S. at 736 n.4. Indeed, Booth alleged that the prison guards assaulted him, and thus disciplinary action against those guards "would have discouraged them from assaulting *him* in the future." *White*, 800 F.3d at 395 (emphasis added); *see also Booth*, 532 U.S. at 734. The plaintiff in *Booth*, unlike Gilman, had identified a remedy applicable to him personally. In his grievance, he also requested injunctive relief, lending further credence to the conclusion that the grievance process could provide him *some* relief: to keep the offending guards away from him. *See Booth*, 532 U.S. at 734. No injunction—*e.g.*, requiring the doctor and nurses to treat his condition—could help Gilman. And Gilman may never have to go to the infirmary again. Any discipline to the medical staff or policy change might help the next inmate with a severe, emergency medical problem, but it could not provide Gilman relief.

Gilman did not have any available remedy to exhaust through the prison grievance system, and so he was not required to use it before filing suit. It follows that his provisional filing of an untimely grievance does not demonstrate that he failed to properly exhaust. We therefore REVERSE the judgment and REMAND for further proceedings on the merits.