

NONPRECEDENTIAL DISPOSITION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 May 19, 2025*

Decided May 20, 2025

Before

DIANE S. SYKES, *Chief Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-1305

BOBBY TATUM,
Plaintiff-Appellant,

v.

RUSSELL WILLIAMS,
Defendant-Appellee.

Appeal from the United States District
Court for the Southern District of
Illinois.

No. 3:21-cv-01697-DWD

David W. Dugan,
Judge.

ORDER

Bobby Tatum, an Illinois prisoner, appeals the summary judgment entered against him for failing to exhaust his administrative remedies before he filed this suit, as required under the Prison Litigation Reform Act (PLRA). *See* 42 U.S.C. § 1997e(a).

* 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).

Because administrative remedies were available to Tatum, and he did not strictly comply with the procedural requirements, we affirm.

In his complaint under 42 U.S.C. § 1983, Tatum alleged that Officer Russell Williams subjected him to an overly invasive strip search at Shawnee Correctional Center, in violation of his rights under the Eighth Amendment. According to Tatum, on May 20, 2021, before an attorney visit, Williams forced him to strip naked, sprayed him with mace, and required him—for purposes of inspection—to spread his buttocks and move his genitals.

The district judge later severed this claim from others. *See Tatum v. Jeffreys et al.*, 21-cv-1101-NJR (S.D. Ill. Sept. 7, 2021). Months later, the judge screened Tatum’s complaint under 28 U.S.C. § 1915A and allowed Tatum to proceed on his claim that Williams violated his rights under the Eighth Amendment by conducting an overly invasive strip search.

Williams soon moved for summary judgment, arguing that Tatum failed to exhaust his administrative remedies under the PLRA because he did not file a grievance related to the strip search. Tatum responded by attaching an affidavit in which he maintained that he had submitted a grievance on May 21, 2021, but never got a response. Tatum also argued that Shawnee’s Offender Manual allowed him to exhaust his administrative remedies by filing directly with the Administrative Review Board a grievance concerning a sexual assault or an incident subject to the Prison Rape Elimination Act (PREA).¹ *See* 34 U.S.C. §§ 30301–30309. Tatum submitted a grievance to the Board on August 20, 2021—one that described the incident with Williams and alleged that Shawnee’s grievance procedures were unavailable to him because the facility had not responded to his May 21 grievance.

The sequence of what happens next turned out to be dispositive for Tatum’s case. On September 7, 2021, before hearing back from the Board, Tatum filed this lawsuit against Williams. On September 15, the Board—which received Tatum’s grievance on September 3—returned the grievance to him, with instructions to furnish the responses

¹ The PREA section of Shawnee’s Offender Manual states that a prisoner may write directly to the Illinois Department of Corrections’ office in Springfield, Illinois, if he does not feel comfortable reporting sexual abuse or harassment to his facility. The Board’s office is also located in Springfield, Illinois.

he received to his grievance, along with copies of prior grievances he had filed. Tatum never refiled his grievance with the requested documents.

The district judge denied Williams's motion for summary judgment because there was a clear dispute of material fact over whether Tatum had submitted a grievance on May 21, as well as a dispute over whether Tatum had exhausted his administrative remedies by filing a grievance with the Administrative Review Board. The judge, explaining that he could not favor Williams's documentary evidence over Tatum's affidavit, invited Williams to request a hearing under *Pavey v. Conley*, 544 F.3d 739, 742 (7th Cir. 2008), about the existence of the May 21 grievance. Williams requested the *Pavey* hearing.

The judge held a hearing over two days. No transcript of the hearing appears in the record, but in a later order the judge summarized the hearing, which we recount here for context. Tatum testified that on May 21 he placed his grievance in the grievance box in his housing unit but never received a response.² He stated that he was uneasy about the availability of Shawnee's grievance procedures, so he filed a grievance directly with the Administrative Review Board on August 20. He acknowledged that he did not get a response from the Board until after he filed his suit.

A grievance officer, Kimberly Johnson, testified next and stated that Shawnee's grievance procedures were routine and reliable and that there was no record of Tatum's May 21 grievance. She described how grievances were recorded at Shawnee: Each time a grievance is received, it is recorded in a grievance log and a receipt is generated. A prisoner's grievances are also recorded in the prisoner's "cumulative counseling log" (which tracks receipts of grievances, among other things).

The judge ultimately dismissed Tatum's case without prejudice because Tatum failed to exhaust his administrative remedies. The judge determined that the grievance process at Shawnee was available to Tatum; that Tatum was "well-versed in the requirements of the grievance process"; that there was no record of Tatum's grievance in his cumulative counseling log or grievance log; and that he could not produce a copy of the May 21 grievance, despite having kept copies of all his grievance documents. The judge then addressed Tatum's argument that the Shawnee Offender Manual provided an alternative means to lodge a grievance about a sexual assault or a PREA incident.

² Tatum admitted that he did not have a copy of the May 21 grievance, despite his practice of making handwritten copies of everything he drafted in prison.

The judge determined that, even if this were a proper way to submit a grievance, Tatum filed his lawsuit before he received a response from the Board, and a “sue first, exhaust later approach has never been acceptable.”

On appeal, Tatum first challenges the judge’s exhaustion analysis on grounds that the Shawnee Offender Manual allowed him to file his grievance directly with the Board. But even if we assume that were true, Tatum admitted at the *Pavey* hearing that he filed his lawsuit before the Board responded to his grievance. And a prisoner exhausts his administrative remedies only when he takes “all steps necessary to exhaust one line of administrative review.” *Crouch v. Brown*, 27 F.4th 1315, 1321 (7th Cir. 2022) (citation omitted).

Tatum also challenges the judge’s evaluation of the evidence presented at the *Pavey* hearing. Tatum argues, for instance, that the judge should not have credited Johnson’s testimony because she admitted that she did not have keys to the grievance box in Tatum’s housing unit and therefore lacked personal knowledge of the existence of his grievance. But Tatum did not make the hearing transcript a part of the appellate record, so we cannot review his challenge to the judge’s admission and assessment of the evidence. *See* FED. R. APP. P. 10(b)(2); *Hall v. Jung*, 819 F.3d 378, 382 (7th Cir. 2016).

Next, Tatum argues that the judge wrongly denied his repeated motions to recruit counsel. At three stages in the proceedings, Tatum asked for the assistance of counsel: before the cases were severed, after the cases were severed, and before the *Pavey* hearing. Each time, the judge denied the request because the case involved a lone, noncomplex issue—whether Tatum exhausted his administrative remedies—and Tatum appeared competent to litigate his case. We see no abuse of discretion. In response to each request, the judge appropriately applied *Pruitt v. Mote*, 503 F.3d 647, 654–55 (7th Cir. 2007) (en banc), concluding at the respective stages that Tatum appeared competent to try the case himself; that the case was not complex because it involved only the issue of exhaustion of administrative remedies; and that Tatum—through his various submissions—had demonstrated his capability to litigate the claims in this case. *Id.*; *Riley v. Waterman*, 126 F.4th 1287, 1298–99 (7th Cir. 2025).

Tatum next challenges the judge’s decision not to order the defendants to produce a video recording that, he says, proves that he placed the May 21 grievance in a grievance box in his housing unit. Tatum first raised the issue of a video recording in his response to Williams’s motion for summary judgment. But Tatum never filed a motion to compel the video evidence. And when a party fails to secure discovery

because of his own lack of diligence, the “[n]eglect is generally not excusable.” *Flint v. City of Belvidere*, 791 F.3d 764, 768 (7th Cir. 2015).

Tatum also maintains that the judge should have sanctioned the defendant for submitting what he describes as altered documents in his motion for summary judgment. He accused Williams in the district court of altering documents related to the grievance procedures at Shawnee because, in his reading, the documents state that he was at Shawnee from 1998 to 2024, and he did not arrive at Shawnee until 2018. But as the judge explained, the grievance records contained no apparent errors.

Tatum also asserts that the judge was biased against him. He notes that the judge yelled at him at the *Pavey* hearing and treated him as “less than a man”; wrongly denied his request for a new judge; and inappropriately ruled on his charge of bias. But it is up to the judge to decide whether to disqualify himself under 28 U.S.C. § 455, *see Thomas v. Dart*, 39 F.4th 835, 843–44 (7th Cir. 2022), or recuse himself under 28 U.S.C. § 144, *see United States v. Barr*, 960 F.3d 906, 919 (7th Cir. 2020). Moreover, Tatum’s failure to include a copy of the transcript prevents us from fully assessing the judge’s comments. And regardless, remarks that are “critical or disapproving” of a litigant do not by themselves show bias. *See Liteky v. United States*, 510 U.S. 540, 555 (1994).

We have considered Tatum’s other arguments, and they are not developed and do not merit any discussion.

AFFIRMED