

NONPRECEDENTIAL DISPOSITION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 July 17, 2025*

Decided July 17, 2025

Before

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 24-2176

SYRIS BIRKLEY,
Plaintiff-Appellant,

v.

LIAM NITZ, et al.,
Defendants-Appellees.

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

No. 23-cv-110-pp

Pamela Pepper,
Chief Judge.

ORDER

Syris Birkley, a Wisconsin pretrial detainee, appeals the summary judgment entered against him for failing to exhaust his administrative remedies before filing this suit, as required under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). Because Birkley did not present evidence that rebuts the defendants' exhaustion defense, 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 facts and draw all reasonable inferences in favor of Birkley, the nonmoving party. *Williams v. Ortiz*, 937 F.3d 936, 941 (7th Cir. 2019). Birkley maintains that he was falsely accused of spitting on a corrections officer's face in December 2019. At his disciplinary hearing, Birkley says, the presiding officers denied him the opportunity to be heard or to present witnesses, and they predetermined the outcome.

Birkley submitted grievances respectively in September, October, November, and December 2020. All four grievances were denied.[†] He did not appeal the September or October decisions. Birkley appealed the November denial, but the reviewing officer denied the appeal because Birkley directed his allegations against the wrong officer. Birkley also appealed the December denial, but this appeal too was denied because he disregarded a directive to supply supporting information. For these latter two rulings, Birkley did not take the necessary next step of appealing to the jail commander.

Birkley then filed this lawsuit alleging, as relevant here, that two officers deprived him of due process at his disciplinary hearing. The defendants later moved for summary judgment on the ground that Birkley had failed to exhaust administrative remedies. The district court agreed with the defendants, rejecting Birkley's argument that the grievance process was unavailable to him.

On appeal, Birkley argues that the district court overlooked evidence showing that prison administrators ignored his complaints—in effect rendering unavailable to him any administrative remedies. We review *de novo* the grant of summary judgment based on a failure to exhaust. *Williams*, 937 F.3d at 941.

To properly exhaust administrative requirements under the Prison Litigation Reform Act, a prisoner must complete every step of the prison's grievance process. 42 U.S.C. § 1997e(a); *Jones v. Bock*, 549 U.S. 199, 218 (2007); *Woodford v. Ngo*, 548 U.S. 81, 93 (2006). But exhaustion is not required when there is no "available" remedy, 42 U.S.C. § 1997e(a), such as when (1) the system is so opaque that no ordinary prisoner can discern or navigate it; (2) prison staff actively thwart prisoners from taking advantage of a grievance process; or (3) the procedures are a guaranteed "dead end." *Ross v. Blake*, 578 U.S. 632, 642–44 (2016).

[†] The handbook at the Milwaukee County Jail defines the relevant grievance process, *see* WIS. ADMIN. CODE DOC § 350.26, which essentially has three steps: (1) place a completed, written grievance form into one of several grievance boxes or hand it to an officer; (2) submit an appeal with supporting documents to the lieutenant; and (3) submit a second appeal and any new evidence to the commander or their designee. (Doc. 22.9, Inmate Handbook, at 3.) The commander's decision is the last step in completing the grievance process.

Birkley did not exhaust his available remedies. The record shows that he did not take the necessary final step of appealing to the commander any of his four grievances. He asserts—without pointing to anything in the record in support—that administrative remedies were not available to him because administrators were unwilling to hear his complaints. But the record shows that Birkley refused to speak with a corrections officer who tried to ask him for more information about the December grievance. And he cites no evidence to show that the process was a “dead end” or that he had to contend with unknowable procedures or intentional obstruction. *See Ross*, 578 U.S. at 643–44.

In his reply brief Birkley argues for the first time that (1) the handbook’s language requiring a second appeal was ambiguous, and (2) jail staff either did not provide him with a handbook or incorrectly told him that a second appeal was unnecessary. But he waived these arguments by not presenting them in his opening brief. *See Bradley v. Village of University Park*, 59 F.4th 887, 897 (7th Cir. 2023).

Lastly, we have considered Birkley’s remaining arguments (e.g., that exhaustion is not required), but none is sufficiently developed to permit review. *See* FED. R. APP. P. 28(a)(8); *Anderson v. Hardman*, 241 F.3d 544, 545–46 (7th Cir. 2001).

AFFIRMED