

NONPRECEDENTIAL DISPOSITION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 June 23, 2026*

Decided August 6, 2026

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 25-2098

WILL HAYWOOD,
Plaintiff-Appellant,

v.

HEATHER WILHELM-COPAS,
Defendant-Appellee.

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

No. 23-cv-1315-pp

Pamela Pepper,
Chief Judge.

ORDER

Will Haywood, a Wisconsin prisoner, sued Heather Wilhelm-Copas, a correctional officer, alleging that she failed to protect him from being sexually assaulted by his cellmate in violation of his rights under the Eighth Amendment. *See* 42 U.S.C.

* 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).

§ 1983. The district court entered summary judgment for Wilhelm-Copas because Haywood did not exhaust his administrative remedies. But because Wilhelm-Copas has not established that Haywood failed to exhaust, we vacate the judgment and remand this case for further proceedings.

I.

We review de novo the entry of summary judgment for failure to exhaust administrative remedies, construing the evidence and drawing all reasonable inferences in favor of Haywood, the non-moving party. *Jackson v. Esser*, 105 F.4th 948, 956 (7th Cir. 2024). Haywood was incarcerated at Stanley Correctional Institution during the events giving rise to this suit. Around April 2023, Haywood told Wilhelm-Copas that his cellmate, Donterrios Bell, was sexually harassing him. Instead of separating Haywood and Bell or reporting the harassment to prison officials, Wilhelm-Copas told Haywood to “deal with it” and informed Bell of Haywood’s complaints. Shortly after, on April 10, Bell attacked and sexually assaulted Haywood inside their cell, while a third prisoner watched.

Later that evening, Bell told correctional staff that he and Haywood had gotten into a fight. When staff found Haywood in his cell, he had a black eye, and he said that Bell had sexually assaulted him. Haywood was taken to a local hospital, and his medical records indicate evidence of sexual assault. The findings of the subsequent investigation under the Prison Rape Elimination Act, *see* 34 U.S.C. §§ 30301–30309, are not in the record, although Haywood tells us that the investigation found his allegations to be unsubstantiated.

Wilhelm-Copas drafted a conduct report the day of the attack, accusing Haywood of assaulting Bell, *see* WIS. ADMIN. CODE DOC § 303.11, and improperly permitting another inmate to enter his assigned living area, *see id.* § 303.54. Haywood filed a grievance on April 28 objecting to the disciplinary proceedings, insisting that he was not guilty, and accusing prison staff of covering up his sexual abuse. Officials dismissed the complaint because it concerned an ongoing disciplinary proceeding. Haywood was later found guilty of both charges. Haywood alleges that he attempted to file another complaint and appeal the denial of his April 28 grievance on May 12 and again on January 1, 2024. The prison has no record of a complaint or appeal from May 12, and none of these grievances informed the prison of Wilhelm-Copas’s failure to protect.

Haywood sued, accusing Wilhelm-Copas and other defendants of violating his rights under the First and Eighth Amendments. After screening the complaint, *see* 28 U.S.C. § 1915A(a), the district court permitted Haywood to pursue a claim under the Eighth Amendment against Wilhelm-Copas for failing to protect him from Bell's assault. Haywood does not contest the court's screening order.

Wilhelm-Copas moved for summary judgment, arguing that Haywood had not exhausted his administrative remedies. She attached copies of Haywood's April 28 and January 1 grievances and affidavits from prison officials asserting that the prison had no record of a written grievance concerning Wilhelm-Copas's failure to protect. The district court agreed, reasoning that Haywood's grievances had not put the prison on notice of his failure-to-protect claim.

II.

Before bringing an action under § 1983, prisoners must exhaust available administrative remedies by following grievance procedures established by state law. 42 U.S.C. § 1997e(a); *see Schillinger v. Kiley*, 954 F.3d 990, 995–96 (7th Cir. 2020). In Wisconsin, most grievances must abide by the procedures set out in § 310.07 of the administrative code for the Department of Corrections, which requires prisoners to submit a signed complaint to the institutional complaint examiner, either by mail or by leaving the complaint in a designated location. WIS. ADMIN. CODE DOC § 310.07. We accept the district court's finding that Haywood failed to file a formal, written complaint under § 310.07 regarding Wilhelm-Copas's failure to protect him.

But a different provision governs grievances "alleging sexual abuse or sexual harassment." WIS. ADMIN. CODE DOC § 310.08. Under that provision, prisoners may use "an alternative method of filing" grievances "regarding sexual abuse or harassment," and that seems to be so notwithstanding the requirements in § 310.07(8) that grievances be submitted to the institutional complaint examiner. *Id.* Neither party addressed, in the district court or on appeal, whether § 310.08 provided the relevant procedures for Haywood to exhaust his administrative remedies. We requested supplemental briefing on the matter, noting that as the movant in a motion for summary judgment, Wilhelm-Copas had the burden of demonstrating "that the plaintiff prisoner failed to exhaust the *applicable* grievance procedures and that those procedures were available to him as a matter of law." *Jones v. Lamb*, 124 F.4th 463, 467 (7th Cir. 2024) (emphasis added).

In his supplemental brief, Haywood contends that the alternative procedures of § 310.08 apply broadly to all claims "regarding" or "relat[ing] to" sexual abuse or

harassment, including his failure-to-protect claim. WIS. ADMIN. CODE DOC § 310.08(1)–(2). He notes that a policy issued by the Department of Corrections states that prisons should offer multiple ways to report allegations of sexual abuse, harassment, retaliation, and “staff neglect or violation of responsibilities that may have contributed to such incidents.” WIS. DOC Executive Directive 72, XIV(A).

Wilhem-Copas counters that the grievance procedures of § 310.08 apply only to “complaints alleging sexual abuse or sexual harassment” as those terms are defined in the regulations related to the Prison Rape Elimination Act. *See* WIS. ADMIN. CODE DOC § 310.03(17), (18) (citing 28 C.F.R. § 115.6). (A failure to protect does not fall under those definitions.) She distinguishes the alternative methods of *reporting* abuse or staff neglect from the methods of *grieving* abuse for purposes of administrative exhaustion.

Neither of these interpretations was presented in the district court, and the statute is too unsettled for us to conclude—without a more robust record—which is correct. Section 310.08(2) refers to alternative filing methods for complaints “regarding” sexual abuse. Words like “relating to” or “regarding” are often—though not always—read expansively to refer to matters relevant to a given subject. *See Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 717 (2018) (discussing the similar, broad meanings of words like “respecting,” “relat[ing] to,” “concerning,” and “regard[ing]”). If the statute is read broadly, the allegation that Wilhelm-Copas failed to protect Haywood is relevant to his sexual assault. On the other hand, the prefatory clause of § 310.08 refers to complaints “alleging” sexual abuse or harassment, and a staff member’s failure to protect is not in and of itself an act of sexual abuse. What’s missing is any evidence about which procedures the Department of Corrections applies to claims like Haywood’s in practice.

Other questions remain. Availability, for instance, is a fact-intensive inquiry. *Smallwood v. Williams*, 59 F.4th 306, 314 (7th Cir. 2023). Prisons must tell prisoners how to grieve their claims and may not “shroud the prisoner in a veil of ignorance” to prevent exhaustion. *Hernandez v. Dart*, 814 F.3d 836, 842 (7th Cir. 2016). At the same time, “[m]ere ambiguity might not make the administrative process unavailable,” and prisoners are expected to “err on the side of exhaustion.” *Reid v. Balota*, 962 F.3d 325, 329 (7th Cir. 2020) (quoting *Ross v. Blake*, 578 U.S. 632, 644 (2016)). But the record does not resolve these issues, nor have the parties had a chance to address them. On the record as it presently stands, we cannot say that Wilhelm-Copas has carried her burden of proving that Haywood failed to exhaust all applicable and available procedures. *See Smallwood*, 59 F.4th at 315.

Given the open questions, the most prudent course is to remand to the district court, leaving to its discretion whether and how to develop the record further. Particularly relevant factual questions might include how the Wisconsin Department of Corrections addresses grievances regarding sexual abuse and a corresponding failure to protect; how the prison advised Haywood to file those grievances; and whether Haywood informed prison officials of Wilhelm-Copas's failure to protect through any means, for example during a PREA investigation. If material factual disputes remain, the district court must determine whether to proceed with an evidentiary hearing under *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008), or whether Haywood is entitled to a jury trial on exhaustion because the issue of exhaustion is intertwined with the merits of Haywood's claim, *see Perttu v. Richards*, 605 U.S. 460, 479 (2025).

Accordingly, we VACATE the judgment and REMAND to the district court for further proceedings consistent with this order.