

In the
United States Court of Appeals
For the Seventh Circuit

No. 21-1840

RANDALL J. BEHNING,

Plaintiff-Appellant,

v.

KEVIN JOHNSON, *et al.*,

Defendants-Appellees.

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

No. 4:19-cv-04225-MMM — **Michael M. Mihm**, *Judge.*

SUBMITTED JANUARY 5, 2023* — DECIDED JANUARY 11, 2023

Before SYKES, *Chief Judge*, and HAMILTON and JACKSON-AKIWUMI, *Circuit Judges*.

PER CURIAM. Randall Behning, an Illinois prisoner, appeals from the district court's grant of summary judgment 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).

defendants on his claims that prison guards violated his constitutional rights while responding to his altercation with a prison guard. The district court granted summary judgment based on Behning's failure to exhaust available administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e. We conclude that Behning, through his attorney, submitted most of his grievances to the appropriate administrative office and on time. We therefore vacate the judgment with regard to his claims concerning those grievances. In all other respects, we affirm.

According to Behning's complaint, which we treat as true at this stage of the case, guards at the Hill Correction Center attacked him after he requested his daily medication, which had been delayed. Behning alleges that two officers struck him repeatedly while other officers looked on. Behning was taken to the emergency room and later received what he alleged to be inadequate care by prison medical staff. Behning says that a few days later, another officer demanded that he sign a disciplinary ticket without reading it. He was brought before a disciplinary board for a hearing on charges that he assaulted an officer, but he alleges he was denied the opportunity to question witnesses or present evidence. He was found guilty and transferred first to Pontiac Correctional Center for 90 days of solitary confinement and then to Menard Correctional Center.

While he was in solitary confinement at Pontiac, Behning tried to file a grievance over the incidents at Hill—the altercation, inadequate medical care, and procedural defects in his disciplinary hearing. Because he sought to grieve an incident that occurred in a facility other than where he was held, regulations required him to submit a grievance form to

a statewide review board, the Illinois Department of Corrections' Administrative Review Board, within 60 days of receiving the final disciplinary report. 20 Ill. Admin. Code § 504.870(a)(4) (2017). His deadline for submitting a grievance, then, was February 5, 2019. He says he made three attempts to submit a grievance form before this deadline. First, he says, without elaboration, that he mailed a grievance to the Board on December 18, 2018. Second, he says he sent a copy of this grievance to his attorney, whom he asked to forward it to the Board. His attorney did so—mailing a copy of the grievance to the Board on January 22—but the Board promptly returned it, asserting that only offenders themselves were permitted to submit grievances. See 20 Ill. Admin. Code § 504.870(a). Third, Behning mailed another grievance, which the prison received on February 20, 2019 and rejected as untimely.

Behning then brought this suit under 42 U.S.C. § 1983. He sued the prison guards for excessive force during the altercation, inadequate medical care received after the altercation, and due-process violations in connection with his disciplinary hearing. After preliminary proceedings, the defendants moved for summary judgment based on the theory that Behning had failed to exhaust his administrative remedies.

The district court granted the defendants' motions on exhaustion grounds. With regard to Behning's grievance relating to inadequate medical care, the court found that Behning had not provided any facts in his grievance that either identified the nurse whom he now sought to sue (Paula Young) or described her alleged misconduct. In any event, the court added, Behning misrouted his grievance by not first sending it to an institutional counselor or grievance officer. (Under

Illinois prison regulations, grievances over medical issues must be sent to the facility where the offender is currently assigned. See 20 Ill. Admin. Code § 504.870(a)(4).) As for Behning's grievances against the remaining guards, the court found the record evidence insufficient to support his assertion that he mailed a grievance some time in December. In making this finding, the court accepted the state's contention that Behning was not permitted to have his attorney submit a grievance to the Board on his behalf.

On appeal, Behning challenges the district court's exhaustion analysis regarding his non-medical grievances and argues that the Illinois Department of Corrections' regulations do not prohibit his attorney from submitting his grievances for him. The state counters that Behning's attorney's attempt to send the grievances to the Board on his behalf runs afoul of the Department's regulation that an inmate submit grievances himself.

The regulation in question, which addresses grievances over an incident that occurs at another facility, sets forth only this general language: "Offenders shall submit grievances directly to the Administrative Review Board." 20 Ill. Admin. Code § 504.870(a). We considered this regulation in *Chambers v. Sood*, 956 F.3d 979, 984 (7th Cir. 2020) (affirming dismissal where Illinois inmate was transferred to new facility and failed to file grievance concerning prior facility with the Board). No case before this court has yet presented the question here.

We agree with Behning that nothing in the text of this regulation prohibits an offender from submitting a grievance through an attorney. The weighty word in this provision is "directly," which we understand not to mean *personally* but

directly with the appropriate office—here, the Administrative Review Board. This command contrasts with the procedure governing grievances that arise out of events at the prisoner’s current facility: those grievances must be filed with on-site counselors or a grievance officer. See 20 Ill. Admin. Code § 504.810(a). Relying on one’s attorney to file a grievance may be unusual, but nothing in the Illinois code explicitly prohibits it. See *James v. Cartwright*, No. 11-cv-1083-MJR-SCW, 2013 WL 3353922 at *6 (S.D. Ill. Jul. 3, 2013) (interpreting Illinois grievance procedure to permit prisoner to submit signed and fully completed grievance faxed by prisoner’s mother to appropriate official). By contrast, a comparable federal prison regulation includes language that expressly prohibits submission by third parties. See 28 C.F.R. § 542.16 (“no person may submit a Request or Appeal on the inmate’s behalf”).

A significant policy reason supports this interpretation. The primary purpose of the administrative exhaustion requirement is to give prison officials an opportunity to resolve issues raised by prisoners before resort is made to the federal courts. See *Woodford v. Ngo*, 548 U.S. 81, 89 (2006). Regardless of how Behning’s grievance arrived, it apprised the Board of the nature of his complaints. We see no sign that Behning sought to skirt grievance procedures. As best we can tell, he tried to file his grievance “in the place, and at the time, the prison’s administrative rules require.” *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002).

The cases cited by the state in support of its interpretation are inapposite. In *Jones v. Dart*, No. 14 C 1929, 2016 WL 1555588 (N.D. Ill. Apr. 18, 2016), the plaintiff testified that he handed his grievance to another prisoner and asked that

prisoner to deliver it. There was no evidence that the grievance was ever sent to the proper recipient. See *id.* at *3. Similarly, in *Catalayud v. Townley*, No. 12-cv-792-JPG, 2015 WL 514594 (S.D. Ill. Feb. 6, 2015), no competent evidence showed that a prisoner's friend sent grievances to the review board as the plaintiff suggested. *Id.* at *5. Here, however, it is undisputed that Behning submitted competent evidence that his attorney mailed a copy of his grievance before the deadline, and that the Board received it.

Behning mounts no meaningful challenge to the summary judgment entered on his claims against Paula Young, and we uphold the judgment in her favor. See Fed. R. App. P. 28(a)(8); *Anderson v. Hardman*, 241 F.3d 544, 545–46 (7th Cir. 2001).

We AFFIRM in part, VACATE in part, and REMAND the case to the district court for further proceedings consistent with this opinion.