

NONPRECEDENTIAL DISPOSITION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 20, 2023*

Decided December 22, 2023

Before

DIANE S. SYKES, *Chief Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-1923

BOOKER T. SHIPP,
Plaintiff-Appellant,

v.

KENNETH LOBENSTEIN,
Defendant-Appellee.

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

No. 22-cv-616-jdp

James D. Peterson,
Chief Judge.

ORDER

Booker Shipp, a Wisconsin prisoner, alleges that Kenneth Lobenstein, a corrections officer, moved him to a new housing unit in retaliation for appealing a suit against Lobenstein. The district judge entered summary judgment against Shipp,

* 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).

concluding that he did not exhaust his administrative remedies on this claim. Because Shipp's administrative grievance did not fulfill the requirement to exhaust, we affirm.

Shipp alleges that he told Lobenstein in August 2022 that he intended to appeal the dismissal of a suit he had filed against Lobenstein. About two weeks later, Shipp learned that Lobenstein was moving him to a new housing unit. When he asked Lobenstein why, Lobenstein explained that because another prisoner was moving into his unit, the prison needed to move someone out and Shipp's name "popped up." Shipp responded that he did not want to move or lose his job (which moving would cause). Lobenstein replied that Shipp had no choice and had to move or face discipline. Shipp moved to the new unit where, he asserts, he faced worse conditions and lost his prior job.

Shipp filed a grievance. As relevant to this case, the grievance form instructs that "[e]ach complaint may contain only one clearly identified issue" and "must contain sufficient information for the department to investigate and decide the complaint." In his grievance Shipp stated that he "was moved from B-unit to C-unit for no reason" and asked that he be "moved back to B-unit and given [his] B-unit job back." He relayed the conversation he had with Lobenstein about the housing transfer. He did not mention the appeal of his suit against Lobenstein, its timing, or that it allegedly motivated the transfer.

The complaint examiner dismissed Shipp's grievance. She reasoned that Shipp had no liberty interest in specific housing and no policy or rule prohibited a transfer "for no reason." The examiner added that housing changes are made for security, medical, or clinical reasons, or otherwise for the interest of the institution. Shipp appealed administratively. He wrote that he was not satisfied because he had not been given a specific reason for the transfer. The appeal was rejected because "[i]nstitution room placement is an administrative decision based on the operational ... needs of the facility."

Shipp responded with this suit under 42 U.S.C. § 1983, alleging that Lobenstein transferred him in retaliation for his prior suit. The judge screened Shipp's complaint, *see* 28 U.S.C. § 1915A, and permitted Shipp to proceed under a claim that Lobenstein had violated his First Amendment rights by retaliating against him for protected speech (appealing his prior suit). Lobenstein later moved for summary judgment. He argued that Shipp had not exhausted his administrative remedies because during the grievance process, Shipp never alleged that the transfer was retaliatory. The judge agreed and granted the motion. He explained that a grievance asserting retaliation had to identify

(1) the protected speech and (2) the retaliatory act. Because Shipp's grievance did neither, Shipp failed to exhaust his remedies.

On appeal we review the exhaustion ruling de novo. *Schillinger v. Kiley*, 954 F.3d 990, 995 (7th Cir. 2020). Under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions ... by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." To exhaust remedies, a prisoner must follow the prison's administrative rules, *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002), including the level of detail required by them, *Jones v. Bock*, 549 U.S. 199, 218 (2007).

Because Shipp is a Wisconsin prisoner, we apply the grievance rules under Wisconsin law. See *Schillinger*, 954 F.3d at 995. Those rules require a grievance to include "one clearly identified issue" with "sufficient information for the department to investigate and decide the complaint." WIS. ADMIN. CODE DOC § 310.07(5)–(6) (2018). A plaintiff exhausts his remedies under these rules only when his grievance "provides notice to the prison of 'the nature of the wrong for which redress is sought.'" *Schillinger*, 954 F.3d at 995 (quoting *Strong v. David*, 297 F.3d 646, 650 (7th Cir. 2002)).

Shipp did not exhaust his First Amendment claim that Lobenstein transferred him to retaliate for Shipp's appeal. The "one clearly identified issue" in Shipp's grievance was that Lobenstein transferred him for no reason. But Shipp did not mention his prior suit, his appeal of it, the appeal's timing in relation to the transfer, or any other conduct of his that the First Amendment might protect. Thus, the prison had no notice that Shipp was grieving an allegedly retaliatory transfer. See *id.*

Shipp responds that he sufficiently alerted the prison to his claim because he asserted that Lobenstein moved him for "no reason," which does not fit into any of the approved reasons listed on the dismissal of his grievance (security, medical, or clinical). In Shipp's view this mismatch adequately notified the complaint examiner that Shipp had accused Lobenstein of moving him for a retaliatory reason. We disagree. Shipp's statement that he was moved for "no reason" implies that he was arbitrarily moved. And it does not support an assumption that Shipp was alleging that the reason was retaliation. *Id.* at 995–96.

Next, Shipp contends that the judge wrongly required that his grievance state a legal claim of retaliation by identifying protected speech and retaliatory action. Shipp is correct that he did not need to name a legal theory or use magic words like "protected speech" and "retaliation." See *Strong*, 297 F.3d at 650. But the judge did not demand this

of Shipp. Rather, the judge properly ruled that his grievance was deficient because it did not “intelligibly” convey to the prison, *id.*, that Shipp believed that Lobenstein retaliated against him by transferring him in response to Shipp’s appeal.

Shipp replies that for two reasons he should be excused from including in his grievance an allegation that Lobenstein moved him retaliatorily: first, he lacked proof and, second, alleging retaliation would have violated the rule limiting him to “one clearly identified issue.” But proof is not required to file a grievance, although supporting documentation is acceptable. WIS. ADMIN. CODE DOC § 310.07(3). And Shipp’s objection to the transfer constitutes a single issue; nothing prevented him from stating to the examiner why he believed the transfer was retaliatory and therefore objectionable.

Finally, Shipp argues that the complaint examiner breached a duty to investigate and uncover a retaliatory motivation. But this argument goes nowhere because the examiner is not a defendant, *see Myles v. United States*, 416 F.3d 551, 551–52 (7th Cir. 2005), and in any case, as explained above, Shipp did not give the examiner adequate notice of a claim of retaliation to investigate.

AFFIRMED