

NONPRECEDENTIAL DISPOSITION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 March 5, 2025*

Decided March 6, 2025

BeforeMICHAEL B. BRENNAN, *Circuit Judge*CANDACE JACKSON-AKIWUMI, *Circuit Judge*JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2612

TITUS HENDERSON,
*Plaintiff-Appellant,**v.*JASON ALDANA, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 20-CV-555-JPS

J. P. Stadtmueller,
*Judge.***ORDER**

Titus Henderson, a Wisconsin prisoner, alleges that correctional officers violated his rights under the Eighth and Fourteenth Amendments by depriving him of all recreation time, placing him in segregation without due process, and racially discriminating against him. Without holding a hearing, the district court found that

* 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).

Henderson failed to exhaust his administrative remedies and entered summary judgment for the defendants. Henderson raised a factual dispute about whether he properly exhausted his remedies for his claim about recreation time, so he was entitled to a hearing before the court ruled. We therefore vacate and remand as to that claim and affirm as to all others.

We construe the facts and draw all reasonable inferences in favor of Henderson, the nonmoving party. *Williams v. Ortiz*, 937 F.3d 936, 941 (7th Cir. 2019). Henderson makes three claims against officers at Racine Correctional Institution in Racine, Wisconsin: (1) they indefinitely denied him recreation time; (2) they placed him in administrative segregation for months without a hearing or any process; and (3) they targeted Black prisoners for administrative confinement. He submitted—or attests that he submitted—multiple inmate complaints relating to these claims.

First, Henderson attests that he submitted one complaint in June 2015 (and resubmitted it later that month) alleging that the defendants refused to give him recreation time for no reason. Henderson provided a copy of the complaint, which we call Exhibit 5, and he attested that it is a true and correct copy of the complaint he submitted. This complaint was not logged in Henderson’s complaint history report, and the defendants submitted an affidavit by the corrections complaint examiner attesting that she believes that Henderson fabricated Exhibit 5 and never submitted it.

Second, Henderson submitted two complaints in June 2015 about the denial of hearings before or during his administrative confinement. The inmate complaint examiner returned both complaints unfiled, with instructions for Henderson to try to resolve the problem with the appropriate staff members and resubmit the complaints if those efforts failed. Henderson did not resubmit them.

Third, the parties agree that Henderson submitted two complaints related to racial discrimination, and Henderson asserts that he also submitted a third. He attests that he first submitted a complaint in June 2015 alleging that the defendants targeted straight Black men for administrative confinement. (The defendants assert that Henderson forged this complaint, too.) Henderson says that the complaint examiner returned the complaint unfiled, asking for more detail, but he submitted no evidence other than his testimony that this grievance exists. In September 2015, the parties agree, Henderson submitted two complaints alleging racial discrimination. Officials returned both complaints, instructing Henderson to provide more details. Henderson resubmitted the complaints without providing more detail. On one, he wrote that his complaint complied with the requirement to be “brief/concise.” The complaint examiner

denied the complaints, explaining that the prison is “not obligated to investigate matters in which an inmate refuses to cooperate.” Henderson appealed the rejection of his complaints, but both denials were upheld.

Henderson filed this lawsuit against several correctional officers, alleging unconstitutional conditions of confinement under the Eighth Amendment and due-process and equal-protection violations under the Fourteenth Amendment. *See* 42 U.S.C. § 1983. The defendants collectively moved for summary judgment based on the affirmative defense that Henderson had failed to exhaust his administrative remedies. *See id.* § 1997e. Henderson then moved for various forms of relief, including default judgment, based on spoliation of evidence. The district court entered summary judgment for the defendants and denied Henderson’s motions as moot.

On appeal, Henderson argues that he provided sufficient evidence to dispute the exhaustion defense and is therefore entitled to an evidentiary hearing to determine whether administrative remedies were available to him. *See Pavey v. Conley*, 544 F.3d 739, 742 (7th Cir. 2008). When a dispute turns on the credibility of a sworn statement, a live hearing is required to determine the truth. *Ingram v. Watson*, 67 F.4th 866, 871 (7th Cir. 2023). 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 as required by 42 U.S.C. § 1997e(a), a prisoner must comply with every step of the process dictated by state law. *Jones v. Bock*, 549 U.S. 199, 218 (2007); *Woodford v. Ngo*, 548 U.S. 81, 93 (2006). The Wisconsin Administrative Code requires prisoners to submit a written complaint within 14 days of the relevant incident. WIS. ADMIN. CODE DOC § 310.09(6).[†] If the complaint fails to meet procedural requirements, officials can either return it, allowing the prisoner to correct the issue and resubmit the complaint, or reject it, allowing the prisoner to appeal the rejection. *Id.* §§ 310.09(3), 310.11(5)–(6). A prisoner exhausts the administrative process only after filing an appeal and receiving a final response. *Id.* §§ 310.13, 310.14. 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.”

[†] The events at issue in this case took place in 2015. Therefore, all references to the Wisconsin Administrative Code are to the version in effect at that time.

Ross v. Blake, 578 U.S. 632, 642–44 (2016). Exhaustion is claim-specific, so we consider Henderson’s three claims separately. *Jones v. Lamb*, 124 F.4th 463, 468 (7th Cir. 2024).

For his first claim—that the defendants denied him exercise time indefinitely—Henderson furnished evidence warranting a hearing on exhaustion. Because he swore that Exhibit 5 was a true and correct copy of a complaint that he submitted, he adequately contested the defendants’ assertion that no such complaint existed. *See Jackson v. Esser*, 105 F.4th 948, 957 (7th Cir. 2024).

Further, Henderson adduced evidence that the grievance process was unavailable to him by swearing that his complaint was returned without any reasons or instructions. If the prison’s response obscured how to proceed, the process was unavailable to him. *See Dole v. Chandler*, 438 F.3d 804, 811–13 (7th Cir. 2006). Because exhaustion is an affirmative defense, it is the defendants’ burden to prove that administrative remedies were available. *Gooch v. Young*, 24 F.4th 624, 627 (7th Cir. 2022). The defendants produced an affidavit from the complaint examiner stating that she believes Exhibit 5 was fabricated and never submitted. But Henderson’s sworn statement creates a swearing contest, and district courts “cannot disbelieve statements in affidavits without holding a hearing.” *Ingram*, 67 F.4th at 871.

By “declar[ing] under penalty of perjury” that Exhibit 5 is a true and correct copy of a grievance that he submitted, Henderson opened himself to serious consequences. Indeed, his willingness to do so is why a *Pavey* hearing is necessary. But Henderson should be aware that if the hearing establishes that he fabricated the exhibit, he will be subject to sanctions for fraud on the court and to a possible referral for a perjury prosecution. *See Ebmeyer v. Brock*, 11 F.4th 537, 547–48 (7th Cir. 2021).

As to Henderson’s second claim, no hearing is required because there is no question that Henderson did not exhaust his available remedies. He submitted two grievances about being placed in administrative segregation without due process. The inmate complaint examiner requested further detail about each one, and Henderson never responded. He argues that the prison was requiring him to provide more detail than the written grievance procedures specify and, therefore, officials blocked any “available” remedy. *See* WIS. ADMIN. CODE DOC § 310.09(1). But we give some deference to prison officials’ reasonable interpretation of their own procedures. *See Strong v. David*, 297 F.3d 646, 649 (7th Cir. 2002) (“It is up to the administrators to determine what is necessary to handle grievances effectively.”) And Henderson made no attempt to comply with the instructions he received, so he cannot blame the complaint examiner. *See Cannon v. Washington*, 418 F.3d 714, 718 (7th Cir. 2005). He also

cannot rest on a belief that resubmitting the grievance would have been futile. *See Thornton v. Snyder*, 428 F.3d 690, 694 (7th Cir. 2005). Here, the officials gave Henderson clear instructions on how to correct his complaints, and he failed to do so. He therefore cannot show that the process was a “dead end” or that he had to contend with unknowable procedures or intentional thwarting. *See Ross* 578 U.S. at 643–44.

Henderson also failed to exhaust his available remedies for his claim that the defendants punished him because of his race. The parties dispute the existence of a June 2015 complaint on this topic. But even assuming that Henderson properly submitted one, he admits that it was returned with a reason (lack of detail), and he does not attest that he resubmitted it. The record also shows that he did nothing further after his two complaints from September 2015 were rejected. Henderson counters that he is entitled to a *Pavey* hearing because there is evidence that the defendants forged the date on the rejection documents to hide that they responded to the complaints several years late. But Henderson’s argument rests on a faulty premise that the “print date” on each document is the date it was created; there is no genuine dispute about whether he received timely responses. *See Walker v. Wexford Health Sources, Inc.*, 940 F.3d 954, 963 (7th Cir. 2019) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

Finally, Henderson argues that the district court erred by denying his motion for default judgment based on alleged misconduct by the defendants. A district court has the inherent power to sanction a party with default judgment if it litigates in bad faith. *Secrease v. W. & S. Life Ins. Co.*, 800 F.3d 397, 401 (7th Cir. 2015). We review a district court’s findings of fact for clear error and its choice of sanction for abuse of discretion. *Id.* In his motions, Henderson made unsubstantiated claims of opposing counsel destroying or stealing his evidence and conspiring against him with prison officials because of his race and religion. Each lawyer denied the misconduct under oath. The district court acknowledged that Henderson’s allegations were “serious” but reasonably determined that none were relevant to whether he properly exhausted remedies in 2015. Henderson repeats his unsupported allegations on appeal but does not demonstrate an abuse of discretion.

We therefore VACATE the judgment with respect to Henderson’s claim about recreation time, and we REMAND for an evidentiary hearing on his exhaustion of that claim. In all other respects the judgment is AFFIRMED.