

NONPRECEDENTIAL DISPOSITION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 November 20, 2024*

Decided December 4, 2024

BeforeFRANK H. EASTERBROOK, *Circuit Judge*THOMAS L. KIRSCH II, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*

No. 24-1495

BRAUN THOMPSON,
*Plaintiff-Appellant,*Appeal from the United States District
Court for the Southern District of Illinois.*v.*

No. 22-cv-59-NJR

UNITED STATES OF AMERICA,
*Defendant-Appellee.*Nancy J. Rosenstengel,
*Chief Judge.***ORDER**

Braun Thompson, a prisoner at the Federal Correctional Institution at Marion, Illinois, sued the United States under the Federal Torts Claim Act, alleging that an employee of the Bureau of Prisons assaulted him. The district court entered summary

* 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).

judgment against Thompson because the undisputed evidence showed that he did not exhaust administrative remedies before suing.

This suit arises out of an incident in January 2021. We describe the complaint's allegations without endorsing their accuracy. Thompson approached the secure housing unit at Marion and asked to stay there to avoid exposure to COVID-19, but a guard told Thompson to return to his cell. As Thompson turned to walk away, he said that he was going to sue the guard. In response, the guard "charged" at him and "force-march[ed]" him to his cell. Because Thompson was moved without his crutch, the march caused him serious pain and exacerbated his medical condition.

Thompson asserts that he wrote to the Department of Justice about these events. First, in January 2021, he emailed a hotline set up by the Department's Office of the Inspector General. In March and May, he mailed complaints to the Attorney General. A few months later, in January 2022, he filed this suit. Only afterward, in September 2022, did Thompson mail a letter to the Bureau of Prisons demanding damages and other relief. He also mailed a copy of that letter to the Attorney General.

Thompson invokes the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671–80 (the "Act"). The government moved for summary judgment on the ground that Thompson did not submit notice of a tort claim to the Bureau before he sued and thus did not exhaust his administrative remedies as required under 28 U.S.C. § 2675. It submitted declarations stating that neither the Department nor the Bureau had received an administrative complaint from Thompson. It also furnished postal tracking data showing that Thompson's letters from March and May 2021 were never delivered and that Thompson did not properly address his post-suit letter to the Bureau.

Thompson contended that the court should excuse his failure to complain to the Bureau because Marion barred his access to legal books, and the prisoner's handbook was useless; thus, he could not learn what he needed to do. He acknowledged that the prison allows him access to computer-based legal research, but he asserted that he does not know how to use computers. He also argued that his mailings to the Department of Justice sufficed to put the government on notice of his claim.

The district court ruled that Thompson had not exhausted his administrative remedies in the manner required by § 2675 before he sued. It added that, although unavailability of administrative remedies may excuse a failure to exhaust claims subject to the Prison Litigation Reform Act, 42 U.S.C. § 1997e; *Ross v. Blake*, 578 U.S. 632, 642–44 (2016), the exception does not apply to claims under the Federal Tort Claims Act. The

court dismissed Thompson's claim without prejudice. We treat its dismissal as final because amendment could not cure the problem. *Cf. Crouch v. Brown*, 27 F.4th 1315, 1319 (7th Cir. 2022) (addressing exhaustion under 42 U.S.C. § 1997e).

On appeal, Thompson contends alternatively that he made sufficient efforts to exhaust his claim and that he is excused from exhausting because remedies were not "available." As to the first argument, Thompson's efforts did not properly exhaust his administrative remedies, and so the district court appropriately granted the government's motion for summary judgment. Under the Act, "[a]n action shall not be instituted upon a claim against the United States for money damages ... unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing." 28 U.S.C. § 2675(a); *see McNeil v. United States*, 508 U.S. 106, 111–13 (1993). The plaintiff must exhaust before filing suit, and, if he does not, the court must dismiss the case. *McNeil*, 508 U.S. at 113. Federal regulations spell out the steps a potential plaintiff must take before filing suit. 28 C.F.R. § 14.2(a); *see Chronis v. United States*, 932 F.3d 544, 546–47 (7th Cir. 2019).

Thompson did not follow the required procedures before "invocation of the judicial process," *i.e.*, filing suit. *McNeil*, 508 U.S. at 113. Before suing he needed to file a notice of claim with the Bureau of Prisons' regional office. 28 C.F.R. §§ 14.2(b)(1), 543.31. But he communicated with the Bureau in September 2022, only after he sued the government. The only communications that preceded Thompson's suit were his email to the Department of Justice's hotline and his letters to the Attorney General. These efforts had no effect in terms of his exhaustion obligation. (Not only were they misdirected, but they did not contain the required information. *See* 28 C.F.R. § 14.2(a); *Chronis*, 932 F.3d at 547 (7th Cir. 2019).) Therefore, dismissal of the tort claim was mandatory.

McNeil teaches that Thompson's status as a prisoner without a lawyer does not relax the statutory exhaustion requirement. This effectively precludes his argument that he was prevented from exhausting because he lacked access to legal books and did not know how to use computer-based research. The Act says nothing about "availability" of remedies, but even if there were some equitable exception to its exhaustion requirement—something we do not decide—Thompson does little more than describe the hardship of litigating pro se, and the Supreme Court has told us that this does not excuse non-exhaustion. *McNeil*, 508 U.S. at 112–13. Nor does Thompson make a strong case that the government thwarted his ability to exhaust. He concedes that Marion provides prisoners with computers that can access the legal authorities that explain the

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exhaustion process, and, as this case progressed, he demonstrated his ability to make use of the available resources. He just fell short of doing so before filing his complaint.

Thompson presents several arguments about discovery and other procedural matters, but none is relevant given our conclusion that he filed suit too soon. Thompson also raises contentions that he did not present to the district court. He seeks a declaration that the Bureau violated what he calls his right to a print law library, and an injunction requiring the prison to establish a print library and provide him with counsel. These standalone claims were not before the district court; therefore, we will not consider them. *See Homoky v. Ogden*, 816 F.3d 448, 454–55 (7th Cir. 2016).

AFFIRMED