

NONPRECEDENTIAL DISPOSITION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 30, 2026*

Decided July 14, 2026

BeforeTHOMAS L. KIRSCH II, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 24-2842

JASON WHITFIELD,
*Plaintiff-Appellant,**v.*WEXFORD HEALTH SOURCES, INC.,
et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Southern District of
Illinois.

No. 22-cv-1528-DWD

David W. Dugan,
*Judge.***ORDER**

Jason Whitfield, an Illinois prisoner, challenges the district court's entry of summary judgment against him for failing to exhaust his administrative remedies, as required under the Prison Litigation Reform Act ("PLRA"). *See* 42 U.S.C. § 1997e(a).

* 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).

Because administrative remedies were available to Whitfield and he failed to exhaust them, we affirm.

I.

In March 2021, Whitfield, then a prisoner at Menard Correctional Center, injured his knee during recreation. A few days later, his knee was examined by Nurses Mary Zimmer, Alisa Dearmond, and Michael Moldenhauer, who all concluded that he likely tore his anterior cruciate ligament (“ACL”). Zimmer gave Whitfield a 30-day low bunk restriction, scheduled him for an x-ray, and recommended he receive an MRI. Whitfield received the x-ray, but after Dr. Mohammed Siddiqui presented Whitfield’s case for collegial review, his MRI referral was denied by a non-party doctor who recommended physical therapy. Whitfield says that he wrote to Nurses Angela Crain and Kimberly Martin about the denial of his MRI and the ineffectiveness of physical therapy, but they did not respond.

Whitfield sued Wexford Health Sources, Inc., the grievance counselors, medical personnel, doctors, and various other prison officials for deliberate indifference to his torn ACL in violation of his rights under the Eighth Amendment, and for maintaining policies and practices that cut costs and delayed adequate medical care. *See* 42 U.S.C. § 1983; *see also Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978).

The district court screened Whitfield’s complaint under 28 U.S.C. § 1915A and allowed Whitfield to proceed on an Eighth Amendment deliberate indifference claim against Moldenhauer, Zimmer, and Dearmond for ignoring his complaints and persisting with a course of treatment that they knew was ineffective; an Eighth Amendment deliberate indifference claim against Siddiqui, Crain, and Martin for ignoring his complaints of ineffective physical therapy and his requests for an MRI; and a *Monell* claim against Wexford Health Sources, Inc. for understaffing the prison and maintaining policies and practices that cut costs and denied necessary medical treatments.

The defendants moved for summary judgment, arguing that Whitfield failed to exhaust his administrative remedies under the PLRA because he mailed his grievances directly to the Administrative Review Board (“ARB”) without first submitting them to his grievance counselor. The defendants attached documents relating to Whitfield’s grievance history, which, they maintained, showed that he had not properly exhausted any of the grievances:

1. On May 16, 2021, Whitfield submitted two grievances directly to the ARB complaining about the denial of his MRI and the lack of responses to his grievances. The ARB returned both grievances, informing Whitfield that he failed to submit the original grievance and his counselor's response.
2. On August 17, 2021, Whitfield filed a grievance about the denial of his MRI, a delay in his physical therapy, and a lack of response to his other grievances. Martin responded in October 2021 that Whitfield was seen by a physical therapist in September. There is no record of Whitfield appealing Martin's response.
3. On November 23, 2021, Whitfield sent a grievance directly to the ARB. This grievance complained that officers searched his cell, confiscated his items, and pushed him down the stairs, further injuring his knee. The ARB returned his grievance because Whitfield did not provide the original grievance and his counselor's response.
4. On October 13 and 18, 2022, Whitfield filed grievances over "medical diagnosis" and "COVID testing." He submitted these grievances after he filed this lawsuit.

Whitfield responded that the grievance process was unavailable because he submitted multiple grievances and letters between March 2021 and October 2022, but only his August 2021 grievance received a response. Whitfield maintained that he appealed that response, but his appeal also went missing. As to the other grievances, Whitfield contended that he placed them in the grievance box but received no response. He also said that he wrote letters to Crain, the warden, his grievance counselor, and other prison officials complaining about his denial of an MRI and missing grievances, but no one responded.

Because prison officials had not responded to his complaints, Whitfield argued that he was forced to file three additional grievances outside the ordinary process by sending them directly to the ARB. He maintained that he could not comply with the ARB's instructions—to provide his original grievance and his counselor's response—because he received no response to his grievances. He also argued that filing with the ARB was appropriate because prisoners did not have an alternative process for when their grievances went missing.

The district court denied the motion for summary judgment. The court first determined that Whitfield's August 2021 grievance and November 2021 grievance to the ARB did not exhaust his administrative remedies because they did not relate to his claim that the medical providers delayed his MRI. Whitfield's October 2022 grievances also did not exhaust his administrative remedies, the court added, because he submitted them after filing this suit. But the court determined that Whitfield's two ARB grievances from May 2021 (complaining about the denial of his MRI) could have exhausted his administrative remedies if the process was unavailable because Whitfield, in his sworn statements, said that he properly filed several grievances that went ignored and he had no alternative process available. The court also concluded that although none of the grievances discussed Crain's involvement, Whitfield's sworn assertion—that he filed grievances in December 2021, January 2022, and April 2022, concerning her conduct—sufficed to create a material dispute about exhaustion. The court then scheduled an evidentiary hearing to determine whether Whitfield did in fact submit grievances concerning Crain's involvement and whether the process was unavailable to him. *See Pavey v. Conley*, 544 F.3d 739, 742 (7th Cir. 2008).

The court held a *Pavey* hearing at which grievance officer Kelly Pierce and Whitfield testified. Pierce testified that any grievances or inquiries about missing grievances would be recorded in the counseling log, which did not reflect any correspondence from Whitfield during the relevant periods. She also testified that the prison had a procedure for prisoners to inquire about missing grievances—the prisoner may write to his counselor for an update. Whitfield, for his part, testified that during the relevant periods, he properly submitted grievances and letters that named Crain and the other defendants. He said that he placed them in a grievance box or left them with mail pick-ups but never received a response and had no recourse when his grievances went missing.

The court granted the defendants' motion for summary judgment based on Whitfield's failure to exhaust his administrative remedies. The court, crediting Pierce's testimony as supported by the counseling log, concluded that the defendants carried their burden of establishing that the grievance procedure was available to Whitfield and that it functioned in routine fashion. The court declined to credit Whitfield's testimony, noting that he understood how to proceed in the event of a lost grievance and that there was "zero paper trail" of his missing grievances beyond his own documentation. And the court added, even if it believed that Whitfield had done everything he could to submit and exhaust grievances, he did not exhaust the claims against Crain because his description of the grievances did not address Crain's involvement.

II.

On appeal, Whitfield argues that the district court improperly credited Pierce's testimony over his and therefore overlooked evidence that the grievance process was unavailable.[†] In his view, his testimony that the grievance process was unavailable was more credible than her testimony that the prison had a procedure for prisoners to proceed in the event of a lost grievance.

A grievance process is unavailable to a prisoner (1) where officials are "unable or consistently unwilling to provide any relief to aggrieved inmates" such that the procedure "operates as a simple dead end"; (2) where the process is "so opaque" that it is "practically speaking, incapable of use"; or (3) where officials "thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Ross v. Blake*, 578 U.S. 632, 643–44 (2016). "Where, as here, the district court granted summary judgment after a *Pavey* hearing, we review the court's conclusions of law de novo and we review any factual conclusions for clear error." *Wallace v. Baldwin*, 55 F.4th 535, 541–42 (7th Cir. 2022).

The district court did not clearly err in crediting Pierce's testimony and thus rejecting his claim that the process was unavailable. The counseling log supported her testimony over Whitfield's assertions that multiple grievances and letters went missing and that he had no back-up process other than sending his grievances to the ARB. Although Whitfield's testimony contradicted Pierce's, "[w]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *See Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985). Based on the court's decision to credit Pierce's testimony, we cannot say that the process was a "dead end," "so opaque" that it was "incapable of use," or "thwart[ed]" by prison officials' improper conduct. *See Ross*, 578 U.S. at 643–44.

Whitfield in his reply brief asserts for the first time that the district court wrongly found that his grievances did not mention Crain. He says the court overlooked evidence that she intentionally neglected his letters complaining about his knee pain and the

[†] While the Supreme Court recently held in *Perttu v. Richards*, 605 U.S. 460, 479 (2025) that a party is "entitled to a jury trial on PLRA exhaustion when that issue is intertwined with the merits of a claim protected by the Seventh Amendment," *Perttu* is not applicable here because the dispute regarding exhaustion is not intertwined with the merits of Whitfield's underlying complaint, which concern only Eighth Amendment claims for deliberate indifference to a serious medical need.

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denial of his MRI. But he waived this argument by waiting until his reply brief to raise it. *Minocqua Brewing Co. LLC v. Hess*, 160 F.4th 849, 856–57 (7th Cir. 2025).

Lastly, Whitfield challenges the denial of his motion to appoint counsel. After the defendants had moved for summary judgment, he sought the assistance of counsel, citing his recovery from recent surgery and his lack of expertise to litigate his case. The court denied Whitfield’s motion, ruling that he appeared competent to try the case himself, that the case was not complex (because it involved only the issue of exhaustion of administrative remedies), and that his submissions reflected his ability to litigate the claims in this case. *See Pruitt v. Mote*, 503 F.3d 647, 654–55 (7th Cir. 2007) (en banc); *Riley v. Waterman*, 126 F.4th 1287, 1298–99 (7th Cir. 2025). Whitfield has not provided any reason to second guess that determination.

AFFIRMED