

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

LEONARD LEE DAVIS, JR.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 3:24-cv-110-TES-CHW
	:	
Officer PRATER, <i>et al.</i> ,	:	Proceedings Under 42 U.S.C. § 1983
	:	Before the U.S. Magistrate Judge
Defendants.	:	
	:	

ORDER AND REPORT AND RECOMMENDATION

Plaintiff Leonard Lee Davis, Jr. filed a *pro se* civil rights complaint seeking relief under 42 U.S.C. § 1983 regarding his pre-trial detention at the Walton County Jail (Jail). (Doc. 1). Defendant Officers Prater and Willis have filed a motion to dismiss, arguing that Plaintiff has failed to exhaust his administrative remedies, that Defendants are entitled to qualified immunity, and that Plaintiff failed to state a claim. (Doc. 12). Plaintiff has responded and opposes the motion.¹ (Doc. 18). As discussed below, Defendants have shown that Plaintiff failed to exhaust his administrative remedies. Therefore, it is **RECOMMENDED** that Defendants’ motion to dismiss (Doc. 12) be **GRANTED**. Further, it is **ORDERED** that Plaintiff’s motion (Doc. 17), docketed as a “Motion for Status and Request for Ruling,” be **DENIED as moot**.

I. Background

Plaintiff brought this action on October 27, 2024, alleging claims for excessive force, failure to intervene, and deliberate indifference to a serious medical need against multiple

¹ Plaintiff’s response, received by the Court on October 27, 2025, is more than five months out of time. *See* (Doc. 13, p. 4) (ordering response within 21 days of receipt of Order). Because Plaintiff asserts unavailability of administrative remedies in his response, the Court, out of an abundance of caution, will consider Plaintiff’s response.

defendants. (Doc. 1). Following screening of Plaintiff's complaint (Doc. 7) under 28 U.S.C. § 1915A, the Court allowed Plaintiff to proceed on his excessive force claim against Defendant Willis and on his failure to intervene claim against Defendant Prater. (Docs. 7, 9). In his excessive force claim, Plaintiff alleges that Defendant Willis maced him. (Doc. 1, pp. 4–5). Plaintiff alleges further that Defendant Prater failed to intervene during this incident. (*Id.*, p. 4).

Defendants move now to dismiss Plaintiff's complaint because Plaintiff failed to state a claim and did not properly exhaust his administrative remedies, and qualified immunity bars the claims. (Doc. 12).

II. Failure to Exhaust

The Prison Litigation Reform Act (PLRA) requires prisoners to exhaust available administrative remedies before bringing an action with respect to prison conditions under 42 U.S.C. § 1983, of any other federal law. 42 U.S.C. § 1997(e)(a). Exhaustion in this context means proper exhaustion: prisoners must “complete the administrative review process in accordance with the applicable procedural rules, including deadlines, as a precondition to bringing suit in a federal court.” *Woodford v. Ngo*, 548 U.S. 81, 88 (2006). The exhaustion requirement is “designed ‘to eliminate unwarranted federal-court interference with the administration of prisons’” by “‘seek[ing] to afford corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case.’” *Turner v. Burnside*, 541 F.3d 1077, 1085 (11th Cir. 2008) (quoting *Woodford*, 548 U.S. at 93).

The Eleventh Circuit's *Turner* opinion establishes a two-step process for reviewing motions to dismiss based on a prisoner's failure to exhaust. A reviewing court first “looks to the factual allegations in the defendant's motion to dismiss and those in the plaintiff's response, and

if they conflict, takes the plaintiff's version of the facts as true. If, in that light, the defendant is entitled to have the complaint dismissed for failure to exhaust administrative remedies, it must be dismissed." *Turner*, 541 F.3d at 1082. Second, if the complaint is not dismissed under step one, "the court then proceeds to make specific findings in order to resolve the disputed factual issues related to exhaustion. . . . Once the court makes findings on the disputed issues of fact, it then decides whether under those findings the prisoner has exhausted his available administrative remedies." *Id.* at 1082–83 (internal citations omitted). As failure to exhaust is an affirmative defense under the PLRA, "defendants bear the burden of proving that the plaintiff has failed to exhaust his available administrative remedies." *Id.*

The grievance procedure applicable in this action was set out in an inmate handbook published by the Walton County Sheriff's Office, Detention Division. That procedure consists of two steps. First, inmates should file a written grievance fully describing the factual basis of any alleged incident, situation, or complaint.² (Doc. 12-1, p. 5). Inmates are then to be provided with a formal, written response to their written grievance by a grievance deputy within fifteen days of submission of a written grievance. (*Id.*). Second, after a prisoner receives a formal response to a written grievance, the Walton County grievance procedure contemplates that the prisoner should commence an appeal, within three days, by "provid[ing] written reasons on the grievance form," and by returning that form as an appeal to a grievance deputy. (*Id.*).

² Defendants provide the Court with what appears to be one page from the applicable grievance procedure. (Doc. 12-1, p. 5). There is no indication that the Jail grievance procedure sets filing timeliness rules that Plaintiff may have violated. This Report and Recommendation concludes only that Plaintiff has not filed a grievance *yet*.

A. *Turner Step One*

In considering whether dismissal for failure to exhaust is appropriate, under *Turner*'s step one the Court must first consider all the alleged facts, construed in favor of Plaintiff when the facts conflict. In his complaint, Plaintiff acknowledges that the Jail has a grievance procedure and claims that he submitted a grievance against Defendants on December 7, 2023. (Doc. 1, p. 7). He clarifies that:

I didn't know Prater['s] name at first but I saw him again a couple weeks later, but nothing was done in response to my grievance. I only knew he had sheriff wrote on his uniform at the time. I wrote the captain and it didn't go any further than that on any grievances. . . . My medical grievances were corrected weeks sometimes months after I wrote them.

(Doc. 1, p. 8).

Defendants argue that Plaintiff never submitted a grievance related to these incidents. (Doc. 12-3, p. 5). The allegations in the complaint indicate that Plaintiff appropriately filed a grievance and seemingly appealed to the Captain. (Doc. 1, p. 8). As such, accepting Plaintiff's version of facts as true as required by *Turner*'s step one, Plaintiff's claims survive the first step.

B. *Turner Step Two*

While Plaintiff's complaint is not subject to dismissal under step one of the *Turner* standard, it does not survive review under *Turner*'s second step, because the evidence of record shows that Plaintiff failed to file a grievance related to his claims. At *Turner*'s second step, any disputed facts must be examined to determine whether Plaintiff exhausted the available administrative remedies prior to filing suit. In support of their motion to dismiss, Defendants have provided three grievances Plaintiff filed while at the Jail, the applicable grievance policy, and a

declaration from Keir Minor, the Grievance Coordinator at the Jail. (Doc. 12-1). Plaintiff states in his response that he filed a grievance, but he fails to provide *any* evidence that he filed a grievance pertaining to the issues in this case. (Doc. 18).

The evidence presented by the parties shows that Plaintiff filed the following grievances while in the Jail:

Grievance No. 33690322: Plaintiff filed Grievance No. 33690322 on December 13, 2023, regarding an allegation that a nurse dropped his medication on the ground and did not get him another pill. (Doc. 12-1, p. 7). The Health Services Administrator responded that the nurse is no longer employed at the Jail. (*Id.*, p. 8). Plaintiff did not appeal. (*Id.*, p. 2).

Grievance No. 33663957: Plaintiff filed Grievance No. 33663957 on December 11, 2023, regarding an allegation that a nurse wrongly gave Plaintiff's medication to Plaintiff's bunkmate. (*Id.*, p. 10). The Health Services Administrator responded that the nurse is no longer employed at the Jail. (*Id.*, p. 11). Plaintiff did not appeal. (*Id.*, p. 2).

Grievance No. 35343109: Plaintiff filed Grievance No. 35343109 on June 27, 2024, alleging that he did not have his uniform exchanged. (*Id.*, p. 13). The Captain provided another officer's response which stated the dryers were not working on that date. (*Id.*, pp. 14–15). Plaintiff did not appeal. (*Id.*, p. 2).

None of the above grievances concerns Plaintiff's allegations of a use of pepper spray involving Defendants Prater and Willis. Based on the evidence before the Court, the record establishes that Plaintiff never filed any grievance relating to the claims at issue in this case. Further, based on the allegations in his response, Plaintiff did not properly exhaust at all, much less *prior* to filing suit. Plaintiff asserts that “[i]n or around January 2024, Plaintiff submitted a

report via the jail kiosk regarding an incident in which Officer Willis sprayed him with mace while another officer, later identified as Officer Prater stood by and did not intervene.” (Doc. 18, p. 1). Plaintiff asserts that he received a response stating “the sheriff would never do such a thing” which led to him believing that the grievance was rejected and no further steps were available. (*Id.*, p. 2). Ignoring his prior conflicting statement that he appealed by writing to the captain (Doc. 1, p. 8), Plaintiff in his response concedes that he did not take any further steps after receiving the alleged denial of his initial grievance. (Doc. 18, p. 2). Plaintiff’s response thus establishes that Plaintiff failed to comply with the Jail’s requirement that he appeal to the Detention Commander or its designee. (Doc. 12-1, p. 5).

Plaintiff’s argument that the initial response “led the Plaintiff to reasonably believe that his grievance was rejected and that no further steps [were] available” is without merit. (Doc. 18, p. 2). The Eleventh Circuit has specifically rejected any argument that pursuing the full grievance process is unnecessary. In *Bryant v. Rich*, the plaintiff argued that an untimely appeal satisfied the exhaustion requirement. 530 F.3d 1368, 1378 (11th Cir. 2008) (affirming district court’s dismissal of claims when plaintiff did not file a timely appeal under applicable grievance procedure). The court explained that “to exhaust administrative remedies in accordance with the PLRA, prisoners must properly take *each* step within the administrative process.” *Id.* (emphasis added) (quotations and citation omitted). The court explained further that “[if] their initial grievance is denied, prisoners must then file a timely appeal.” *Id.* Even assuming Plaintiff filed an appropriate grievance, which is contradicted by the multitude of evidence, Plaintiff failed to take each step required by the Jail’s grievance procedure. As such, he did not properly exhaust his administrative remedies.

Plaintiff also alleges in his untimely response that he should be excused from the exhaustion requirement because the grievance process was unavailable to him. (Doc. 18, pp. 1, 3). This argument is also without merit.

“A remedy has to be available before it must be exhausted, and to be ‘available’ a remedy must be ‘capable of use for the accomplishment of [its] purpose.’” *Turner*, 541 F.3d at 1084 (quoting *Goebert v. Lee Cnty.*, 510 F.3d 1312, 1322–23 (11th Cir. 2007)). Once a defendant shows that an administrative remedy is available, “the burden of going forward shifts to the plaintiff, who, pursuant to *Turner*, must demonstrate that the grievance procedure was subjectively and objectively unavailable to him.” *Geter v. Baldwin State Prison*, 974 F.3d 1348, 1355 (11th Cir. 2020) (quotations and citations omitted). Courts have outlined three different ways a plaintiff can show that administrative remedies are unavailable:

The modifier “available” means that an administrative remedy must provide the possibility of some relief. *Id.* at 643. There are three kinds of circumstances that make an administrative remedy unavailable. *Id.* First, an administrative remedy is unavailable when the administrative procedure operates as a simple “dead end,” with officers unable or consistently unwilling to provide any relief to aggrieved inmates. *Id.* For example, if a handbook required inmates to submit grievances to a particular office and the office disclaims the capacity to consider petitions or if officials have authority but decline to exercise it, then it is unavailable. *Id.* Second, a remedy is unavailable when an administrative scheme is so opaque that it is incapable of use. *Id.* The mechanism may exist to provide relief, but no ordinary prisoner can discern or navigate it. *Id.* at 643–644. Third, a remedy is unavailable when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, and intimidation. *Id.* at 644.

McDowell v. Bowman, 2022 WL 4140331, at *3 (11th Cir. Sept. 13, 2022) (citing *Ross v. Blake*, 578 U.S. 632 (2016)).

Defendants carried their burden by pointing to the Jail's administrative process. (Doc. 12-1, p. 5). Plaintiff has failed to carry his burden because he has not shown that the Jail's grievance procedure was both subjectively and objectively unavailable.

Plaintiff's allegations that "the process was unclear, confusing, and effectively unavailable" (Doc. 18, p. 1) and that "[s]taff responses . . . effectively blocked Plaintiff from pursuing the grievance further" (*Id.*, p. 3) would fall under the first and second *Ross* exceptions. The record, however, does not support a finding that the Jail's grievance procedure was unavailable. As to the first *Ross* exception, Plaintiff does not support any argument that this process operated as a dead end. As discussed above, Plaintiff has used the grievance process three times while incarcerated at the Jail. (Doc. 12-1, pp. 7-15). Two of the grievances, Grievance Nos. 33690322 and 33663957, were filed within a week of the grievance Plaintiff alleges to have filed relating to this suit. (Docs. 1, p. 7; 12-1, pp. 7-12). All of Plaintiff's recorded grievances contain a staff member's response and Captain Minton's response. (Doc. 12-1, pp. 7-15). Plaintiff has provided no evidence to establish or support that the grievance procedure at the Jail operates as a dead end.

As to the second *Ross* exception, Plaintiff states that the grievance procedure is confusing and unclear, staff never informed him how to file, and other inmates would have to help him. (Doc. 18, p. 3). As noted above, this argument is contradicted by the record because Plaintiff filed multiple grievances while incarcerated at the Jail, including two within seven days of the alleged grievance in this case. (Docs. 1, p. 7; 12-1, pp. 7-12). Plaintiff's assertion that the process is confusing and unclear is not persuasive. It is not reasonable to believe the grievance process in this case was unavailable when Plaintiff filed two other grievances at the Jail less than a week after the

purported one here. Based on the record before the Court, the grievance process was available to Plaintiff, and he is not excused from the exhaustion requirement.

Further, because the record clearly establishes that Plaintiff failed to exhaust his administrative remedies, the Court need not consider Defendants' argument that Plaintiff failed to state a claim and that qualified immunity bars this suit against Defendants.

CONCLUSION

Because the record conclusively establishes that Plaintiff failed to exhaust his administrative remedies prior to commencing this suit, it is **RECOMMENDED** that Defendants' motion to dismiss (Doc. 12) be **GRANTED**, and that this action be **DISMISSED without prejudice**. Further, it is **ORDERED** that Plaintiff's motion (Doc. 17), docketed as a "Motion for Status and Request for Ruling," be **DENIED as moot**.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, **WITHIN FOURTEEN (14) DAYS** after being served with a copy thereof. Any objection is limited in length to **TWENTY (20) PAGES**. *See* MDGA Local Rule 7.1. The District Judge shall make a *de novo* determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions

if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 30th day of October, 2025.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge