[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 17-14278
Non-Argument Calendar

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D.C. Docket No. 1:17-cv-20192-JEM

EDUARDO MOLINA BRACERO,

Plaintiff-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
COL. RODFREDRICK NEWELL,
individually and in his own capacity, Miami Dade Correctional Institution,
CAPT. DARLENE GREEN,
individually and in her own capacity, Miami Dade Correctional Institution,
DIRECTOR CLASSIF. JAVIER JONES,
individually and in his own capacity, Miami Dade Correctional Institution,
WARDEN, MIAMI DADE CORRECTIONAL INSTITUTION, et al.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Florida

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(August 14, 2018)

Before WILLIAM PRYOR, ROSENBAUM, and ANDERSON, Circuit Judges.

PER CURIAM:

Eduardo Bracero, a Florida-state prisoner proceeding *pro se*, appeals the district court's dismissal of his 42 U.S.C. § 1983 civil-rights action for failure to exhaust all administrative remedies, as required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a). Bracero's complaint alleged that prison officials at Dade Correctional Institution failed to protect him from multiple assaults by other inmates—in one instance, an inmate pinned his arms to his side while another inmate slashed his face with a razor blade—and that the prison's tolerance of drug and gang activity jeopardized all inmates' safety and security.

We review *de novo* a district court's interpretation and application of the PLRA's exhaustion requirement. *Johnson v. Meadows*, 418 F.3d 1152, 1155 (11th Cir. 2005). We review the factual findings underlying an exhaustion determination for clear error. *Bryant v. Rich*, 530 F.3d 1368, 1377 (11th Cir. 2008).

The PLRA requires prisoners who wish to challenge some aspect of prison life to exhaust all available administrative remedies *before* resorting to the courts.

*Porter v. Nussle*, 534 U.S. 516, 532 (2002); *see* 42 U.S.C. § 1997e(a); *Alexander v. Hawk*, 159 F.3d 1321, 1326 (11th Cir. 1998) (stating that a prisoner cannot prove exhaustion with grievances and appeals that he submits after filing his complaint in federal court). Exhaustion is mandatory under the PLRA, and unexhausted claims cannot be brought in court. *Jones v. Bock*, 549 U.S. 199, 211 (2007). The failure to exhaust administrative remedies requires that the action be dismissed. *Chandler v. Crosby*, 379 F.3d 1278, 1286 (11th Cir. 2005).

To satisfy the exhaustion requirement, a prisoner must complete the administrative process in accordance with the applicable grievance procedures established by the prison. *Jones*, 549 U.S. at 218; *Johnson*, 418 F.3d at 1156. In other words, "[t]he PLRA requires 'proper exhaustion' that complies with the 'critical procedural rules' governing the grievance process." *Dimanche v. Brown*, 783 F.3d 1204, 1210 (11th Cir. 2015). Procedurally defective grievances or appeals are not adequate to exhaust. *Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006).

Although proper exhaustion is generally required, a remedy must be "available" before a prisoner is required to exhaust it. *Turner v. Burnside*, 541 F.3d 1077, 1082, 1084 (11th Cir. 2008). The Supreme Court has identified three kinds of circumstances in which an administrative remedy is not available. *Ross v. Blake*, 136 S. Ct. 1850, 1859 (2016). First, "an administrative procedure is unavailable when (despite what regulations or guidance materials may promise) it

operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates." *Id.* Next, "an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use." *Id.* And finally, a remedy may be unavailable "when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Id.* at 1860.

In response to a prisoner lawsuit, defendants may file a motion to dismiss and raise as a defense the prisoner's failure to exhaust administrative remedies. *Whatley v. Warden, Ware State Prison*, 802 F.3d 1205, 1209 (11th Cir. 2015). We have established a two-step process for deciding motions to dismiss for failure to exhaust under the PLRA. *Id.* District courts first should compare the factual allegations in the motion to dismiss and those in the prisoner's response and, where there is a conflict, accept the prisoner's view of the facts as true. "The court should dismiss if the facts as stated by the prisoner show a failure to exhaust." *Id.* Second, if dismissal is not warranted at the first stage, the court should make specific findings to resolve disputes of fact, "and should dismiss if, based on those findings, defendants have shown a failure to exhaust." *Id.*

The grievance process applicable to Florida prisoners is set out in § 33-103 of the Florida Administrative Code. Under this process, a prisoner ordinarily "must: (1) file an informal grievance with a designated prison staff member; (2)

file a formal grievance with the institution's warden; and then (3) submit an appeal to the Secretary of the [Florida Department of Corrections ("FDOC")]." *Dimanche*, 783 F.3d at 1211; *see* Fla. Admin. Code §§ 33-103.005–103.007. These steps must be completed in order and within certain time frames, which can be extended. *See* Fla. Admin. Code § 33-103.011(4). A prisoner may proceed to the next step in the process without receiving a response when the prison's time to respond has expired. *Id.* § 33-103.011(4).

Grievances or appeals may be returned to the inmate without further processing for numerous reasons, including if the inmate has written his complaint outside of the boundaries of the space provided on the requisite form. *Id.* § 33-103.014(1)(k). Returned grievances may be corrected and refiled. *Id.* 33-103.014(2).

For specific types of grievances, including those alleging emergencies or involving protective management issues, prisoners may elect to skip the first two steps and file a grievance directly with the Secretary of the FDOC. *Id.* § 33-103.005(1). Such a "direct grievance" is filed using Form DC1-303, "Request for Administrative Remedy or Appeal." *Id.* § 33-103.007(6)(a). Direct grievances must be identified on the form as such and the prisoner "must clearly state the reason for not initially bringing the complaint to the attention of institutional staff

and by-passing the informal and formal grievance steps of the institution or facility." *Id.* § 33-103.007(6)(a)1.–2.

Here, the district court did not err in dismissing Bracero's complaint for failure to exhaust administrative remedies. The facts alleged and evidence presented by Bracero, viewed alongside uncontradicted evidence offered by the FDOC, established that Bracero's attempts to exhaust his administrative remedies were ineffective to satisfy the requirement of "proper exhaustion."

Bracero did not comply with the normal three-step process. Although he submitted at least two informal grievances in September 2016 on the requisite forms that discussed his attacks by other inmates and the prison's drug and gang activity, these grievances were insufficient to initiate the three-step process because they were procedurally defective. *See Woodford*, 548 U.S. at 93-95. Specifically, the prison returned these grievances without further action for non-compliance with the rule requiring an inmate to write his complaint within the boundaries of the space provided on the form. *See* Fla. Admin. Code § 33-103.014(1)(k). Indeed, Bracero wrote part of his grievances below the line that expressly stated, "Do not write below this line."

Bracero complains that the prison refused to answer his grievances, and it is not difficult to understand why he would be frustrated, given that the grievances were still legible and just a few lines were outside the boundaries of the space

provided. Yet the PLRA demands that prisoners complete the administrative process in accordance with the applicable grievance procedure set by the prison. *Jones*, 549 U.S. at 218; *Johnson*, 418 F.3d at 1156. And the prison here acted according to the clear guidelines of the grievance procedure.

Furthermore, nothing in the record indicates that Bracero either refiled his informal grievances or attempted to proceed to the next step in the process when prison officials returned the September 2016 informal grievances for failure to comply with the proper procedure. *See* Fla. Admin. Code §§ 33-103.006(1)(a), 33-103.007. While the defendants' records showed that Bracero filed three direct grievances and appeals in 2016, none of these addressed the incidents he complained of in the informal grievances.

With regard to the direct-grievance route to exhaustion, we cannot conclude that the district court erred in finding a failure to exhaust. The letters that Bracero sent directly to the Secretary of the FDOC were not submitted on the required forms and did not contain necessary information, and there is nothing in the record to indicate that the Secretary treated these letters as direct grievances, let alone properly filed ones. *See* Fla. Admin. Code § 33-103.007(6)(a); *Woodford*, 548 U.S. at 93–95. While Bracero produced an October 27, 2016, letter he received from the FDOC relating to this correspondence, this letter simply notes that his

correspondence was being forwarded for review and response. It does not show proper exhaustion under § 33-103.007.

Nor does the prison's refusal to address the substance of his non-compliant grievances render the administrative remedies provided by the grievance procedure unavailable. The record established that the FDOC employees responded to Bracero's informal grievances, formal grievances, and appeals in accordance with the grievance procedure, and each denial informed Bracero of his right to appeal. Moreover, despite his arguments to the contrary, the record does not support Bracero's claim that the defendants prevented or thwarted him from bringing his grievances or otherwise complying with the grievance procedure.

To the extent Bracero claims that the prison's lack of response to certain grievances prevented him from going forward with the three-step process, he is incorrect. The grievance procedure permitted Bracero to correct and refile the grievances that were returned to him, Fla. Admin. Code § 33-103.014(2), and also to proceed with the next step in the three-step process after the expiration of the prison's time to respond to a grievance, *id.* § 33-103.011(4) ("[E]xpiration of a time limit at any step in the process shall entitle the complainant to proceed to the next step of the grievance process."). While the PLRA does not require prisoners to grieve a breakdown in the grievance process, Bracero has not shown such a breakdown. And the PLRA required him to pursue the procedures that were

available to him. *Cf. Turner*, 541 F.3d at 1084 (stating that a prison's failure to respond to a formal grievance did not relieve the prisoner of his obligation to file an appeal when the grievance procedure provided that prisoners could file an appeal if they did not receive a response to a formal grievance within 30 days).

Bracero's other efforts to overcome the exhaustion requirement are unavailing. He asserts that his complaint should not have been dismissed before granting injunctive relief because he alleged imminent danger, but exhaustion is a prerequisite for any prisoner suit. *Johnson*, 418 F.3d at 1155; *Alexander*, 159 F.3d at 1326. Finally, while Bracero argues that Fla. Stat. § 768.28(9)(a) somehow excuses him from exhaustion, that provision is a state statute related to immunity and does not mention exhaustion or the PLRA. Fla. Stat. § 768.28(9)(a).

Because a grievance process was available to Bracero and he did not follow the proper procedures, the district court properly determined that he failed to exhaust all available administrative remedies. Accordingly, we affirm the dismissal of his complaint for failure to exhaust under the PLRA, § 42 U.S.C. § 1997e(a).

**AFFIRMED.**