

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13833
Non-Argument Calendar

D.C. Docket No. 3:18-cv-00122-TCB

JANE DOE,

Plaintiff-Appellant,

versus

STEPHEN ROBERT SHEELY,
in his individual capacity,
CHUCK SMITH,
in his individual capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(April 2, 2021)

Before MARTIN, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Jane Doe,¹ a Georgia prisoner, appeals the district court's order dismissing her lawsuit for failure to exhaust her administrative remedies under the Prison Litigation Reform Act ("PLRA"). After careful consideration, we affirm.

I

In 2016, Doe was incarcerated in the Meriwether County jail. The following year, she was sexually assaulted several times by Stephen Sheely, a detention officer at the jail. Sheely was arrested in August 2017 for his actions and was charged with sexual battery and other related crimes. Around that same time, Doe was transferred to Spalding County jail and held there on behalf of the Meriwether County sheriff's office. Doe then sued Sheely and Chuck Smith, the Meriwether County sheriff, for the assaults that occurred in the Meriwether County jail.

Smith moved to dismiss Doe's claims against him, arguing that Doe failed to exhaust her administrative remedies under the PLRA. The district court found that both the Meriwether County jail and the Spalding County jail had grievance procedures and that Doe failed to file a grievance concerning the assaults in either jail. The court therefore dismissed Doe's suit against Smith.

¹ A panel of this Court previously affirmed the district court's denial of Doe's motion to proceed anonymously. See Doe v. Sheely, 781 F. App'x 972, 972–73 (11th Cir. 2019) (per curiam) (unpublished). The district court nevertheless continued to refer to Doe anonymously, including in one of the orders under review here, even after the mandate issued in the previous appeal. In keeping with the district court's practice, and to protect Doe's privacy, we will follow the example of the district court.

Sheely, the remaining defendant in the case, deposed Doe. During the deposition, Doe said she filed a grievance through the Spalding County jail's grievance system. According to Doe, she told the Spalding County jail that she wanted to "speak to someone about the incidents that occurred within Meriwether County." She said she did not provide Spalding County jail with any additional details.

Sheely then moved for judgment on the pleadings, arguing that Doe failed to exhaust her administrative remedies under the PLRA. The district court agreed and dismissed Doe's suit against Sheely. It found Doe failed to file a grievance concerning the assaults during her time at the Meriwether County jail. The court found the Spalding County jail had a policy that allowed Doe to file grievances with Spalding County jail concerning the assaults in Meriwether County jail. The court acknowledged that Doe said she filed such a grievance with the Spalding County jail, but found the grievance lacked the detail required by Spalding County jail's grievance procedures. The district court thus determined that Doe failed to exhaust her administrative remedies.

This is Doe's appeal of the district court's orders granting Smith's motion to dismiss and Sheely's motion for judgment on the pleadings.

II

We review de novo a district court's order dismissing a lawsuit for failure to exhaust administrative remedies as required by the PLRA. Parzyck v. Prison Health Servs., Inc., 627 F.3d 1215, 1217 n.2 (11th Cir. 2010). In deciding whether a prisoner exhausted her administrative remedies, the district court may consider facts outside of the pleadings and make factual determinations so long as the court does not decide the merits and the parties have sufficient opportunity to develop the record. Bryant v. Rich, 530 F.3d 1368, 1375–76 (11th Cir. 2008). We review such factual findings for clear error, and those findings will stand unless we are “left with the definite and firm conviction that a mistake has been committed.” Id. at 1377 (quotation marks omitted).

Under the PLRA, “[n]o action shall be brought with respect to prison conditions . . . until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). As the statute's language makes clear, a prisoner need not exhaust unavailable remedies. Ross v. Blake, 578 U.S. ___, 136 S. Ct. 1850, 1858 (2016). But for available remedies, this exhaustion rule requires the prisoner's grievance to include the level of detail mandated by the prison's grievance procedures. See Jones v. Bock, 549 U.S. 199, 218, 127 S. Ct. 910, 923 (2007). On appeal, Doe says there were no available remedies in the Spalding County jail to grieve misconduct that occurred in a separate jail. Specifically, she challenges the

district court's finding that Spalding County jail had a policy that allowed her to file grievances with Spalding County jail concerning the assaults in Meriwether County jail. Based on that challenge, because there were no available remedies in Spalding County jail, she says she exhausted her remedies. In her view, this means it is immaterial whether she filed a grievance and whether the grievance included the requisite detail.

We see no clear error in the district court's findings. The record shows that a prisoner housed in the Spalding County jail on behalf of the Meriwether County sheriff's office could submit a grievance to a supervisor concerning Meriwether County jail, which would be forwarded to the Meriwether County jail under the "normal process." The record further shows Doe knew she could file grievances with Spalding County jail about the Meriwether County jail, as evidenced by her filing of several such grievances and requests. Doe argues that Spalding County jail had no available remedies because its procedures state that matters over which "the Spalding County Detention Facility has no control" cannot proceed through its grievance system. But because the record shows Spalding County jail's "normal process" was to forward grievances by prisoners held on behalf of the Meriwether County sheriff's office to the Meriwether County jail, we do not view such grievances as matters outside of Spalding County jail's control. Likewise, while Doe says Spalding County jail refused to process some of her grievances

concerning the Meriwether County jail, this does not show Spalding County jail refused to forward those grievances to Meriwether County jail. We are therefore not left with a definite and firm conviction that the district court erred in finding Doe was able to file grievances in the Spalding County jail regarding the assaults that happened in the Meriwether County jail, and thus there were remedies available to Doe in the Spalding County jail.

Because the district court did not clearly err in finding that the Spalding County jail had available remedies, that leaves only the question of whether Doe exhausted such remedies. When contesting Smith's motion to dismiss, Doe did not claim she filed a grievance in Spalding County jail concerning the assaults in Meriwether County jail. So to the extent she now says she filed a grievance, she is barred from raising this issue for the first time on appeal in response to Smith's motion to dismiss filed in district court. See Access Now, Inc. v. Sw. Airlines Co., 385 F.3d 1324, 1331 (11th Cir. 2004). Doe did raise this issue when contesting Sheely's motion for judgment on the pleadings. But Doe does not challenge the district court's finding that the grievance she says she filed with the Spalding County jail lacked the level of detail required by its grievance procedures. We therefore must affirm the district court's ruling that Doe failed to exhaust her administrative remedies.

AFFIRMED.