

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12561
Non-Argument Calendar

EDDIE JAMES MOULTRIE,

Plaintiff-Appellant,

versus

CAPTAIN JAMES,

Correctional Officer-Rank: Captain,

OFFICER HANSEN,

Correctional Officer-Rank: Officer,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:23-cv-00472-MMH-J_T

Before BRANCH, KIDD, and ANDERSON, Circuit Judges.

PER CURIAM:

Eddie James Moultrie, a Florida prisoner proceeding pro se, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint against prison officials because he failed to exhaust his administrative remedies. After careful review, we affirm.

I. BACKGROUND

As alleged by Moultrie, on May 26, 2022, he was housed in administrative confinement at Columbia Correctional Institution ("Columbia"), when he began complaining of sleep deprivation, which resulted in his becoming paranoid and believing that his cellmate meant him harm. Staff advised him that "there was nothing they could do," but Moultrie declared a mental health emergency and was ultimately moved to a different cell.

When staff later decided to return Moultrie to his original cell, Moultrie still believed that he was in "imminent danger" and refused to submit to hand restraints. Moultrie informed shift supervisor Captain James of the situation when he arrived on the scene, but he "was not concerned." Although Moultrie ultimately submitted to hand restraints and allowed himself to be moved to the shower area for a strip search, "the fear of reality set[] in and [he] . . . threw [him]self into the shower door[,] screaming staff assault while laying down on [his] stomach refusing to stand up"

Additional staff arrived, placed Moultrie in leg restraints, and forced him back to his original cell, despite Captain James's instructions to the contrary. Moultrie allowed the removal of his leg restraints but refused to remove his hand restraints after the cell door was closed, "and the use of force camera was de-activated."

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“Seconds later,” Officer Hansen “appeared and stared at [Moultrie] through the cell window while [he] was sitting on the [toilet],” called another officer over, and sprayed Moultrie with chemical agents without warning.

As a result of this incident, Moultrie was placed on a heightened security status and later referred to close management, which is a more restrictive type of confinement. The close management referral, which Moultrie believes contains manipulated facts, stated that, on the date in question, “Moultrie was observed holding his roommate in a headlock actively choking him . . . [and] chemical agents [were used] to prevent further harm to [Moultrie’s] roommate.” The referral also stated that “Moultrie began to kick his legs at [prison] staff attempting to strike them.”

A. Moultrie’s Grievance Filings

With certain exceptions, the Florida Department of Corrections (“FDOC”) requires an inmate to follow a sequential three-step process for filing grievances: “(1) file an informal grievance to the staff member responsible for the particular area of the problem; (2) file a formal grievance with the warden’s office; and (3) submit an appeal to the Office of the Secretary of the FDOC.” *Parzyck v. Prison Health Servs., Inc.*, 627 F.3d 1215, 1218 (11th Cir. 2010) (citation modified); *see* Fla. Admin. Code R. 33-103.005–.007. Following the alleged May 2022 incident, Moultrie made numerous grievance filings, albeit not in the order required by the FDOC’s procedure. We will briefly summarize the relevant filings here.

On June 8, 2022, Moultrie filed grievance appeal no. 22-6-16843, complaining of the May 2022 incident, and requesting that an investigator review video footage of what occurred. Although Moultrie indicated that this complaint was to be sent to the Secretary's Office, he also stated that "[he was] filing this grievance to the Warden of th[e] institution per Rule 33-103.006," which concerns formal grievances. The Secretary's Office returned the grievance without action because, among other things, Moultrie failed to submit it at the appropriate level. It also indicated that it had forwarded his grievance to the Warden and any request for video retention "need[ed] to be initiated at the institutional level in accordance with [FDOC] procedure 602.033." That same day, the Secretary's Office returned appeal no. 22-6-16842, another filing Moultrie made around June 8, 2022. However, the record before the district court at the motion-to-dismiss stage did not contain a copy of this grievance appeal or the Secretary's response.

On June 16, 2022, Moultrie filed two formal grievances. In the first grievance, Moultrie complained of the lack of response to a request for video footage made 20 days earlier. The Warden denied the grievance, stating that the institution had not received a video retention request and that the Office of the Inspector General would retain any applicable footage. Moultrie then filed appeal no. 22-6-19919, referencing this grievance and "all applicable request[s] for video retention," complaining that the Warden's response did not state a reason for its denial, and noting he had also requested the video from the Office of the Inspector General. The

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Secretary's Office denied this appeal because the responses at the institutional level and central office were sufficient.

In the second June 16 formal grievance, Moultrie complained that his close-management placement was based on a dishonest referral and asked to be returned to the general population. The Warden denied this grievance. Moultrie then filed appeal no. 22-6-20035, which described the May 2022 incident and complained that the decision to place him in close management was not consistent with video evidence of the interaction. The FDOC denied Moultrie's appeal, finding that his placement was the result of his own behavior, and that he failed to show that the referral included any inaccurate information.

On June 20, 2022, Moultrie filed informal grievance no. 201-2206-0180, asserting that he had not received responses to previous requests for information as to why he was in confinement for the month prior to the May 2022 incident. This informal grievance was returned without action because it addressed more than one issue, which was against FDOC policy. Shortly thereafter, Moultrie filed formal grievance no. 2206-201-140, in which he recited what purportedly occurred on May 26 and requested an investigation into "CLO Minshew" for filing a false close management referral. The Warden denied this grievance, finding that Moultrie's close management placement was based on his own behavior and that he was unable to live in the general population. Moultrie then filed appeal no. 22-6-21071, explaining that he was not seeking a reversal of his close management placement but rather sought to complain

that staff reported false information in his referral. The Secretary's Office again returned the appeal without action because Moultrie failed to follow proper procedures, but forwarded Moultrie's complaints to the Warden because they contained allegations of excessive force against Officer Hansen.

On July 11, 2022, Moultrie filed informal grievance no. 201-2207-0125, complaining that he had not received responses to his requests for the "use of force incident" number for the May 2022 incident. The next month, Moultrie filed informal grievance no. 510-2208-0117, raising similar complaints. Both of these filings were returned without action. Thereafter, Moultrie filed grievance appeal no. 22-6-23941, again asserting that he had not yet received responses to his previous filings, but this appeal was also returned without action. Finally, on August 20, 2022, Moultrie filed informal grievance no. 510-2208-0548 with the Inspector General's Office and requested the incident report number for the May 2022 incident. The Inspector General's Office returned this filing without action and explained that "asking questions or seeking information[,], guidance[,], or assistance is not considered a grievance."

B. District Court Proceedings

In April 2023, Moultrie filed the instant pro se complaint, alleging that Captain James and Officer Hansen (the "Defendants") violated his Eighth Amendment Rights when they used excessive force against him on May 26, 2022. The Defendants moved to dismiss the complaint and argued, in relevant part, that Moultrie failed to exhaust his administrative remedies prior to bringing his § 1983

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action, as is required by the Prison Litigation Reform Act (“PLRA”). They provided declarations from the FDOC’s records custodian in charge of grievance appeals and the FDOC’s informal grievance coordinator, along with copies of the relevant grievance filings discussed above.

Moultrie, in turn, asserted that he had effectively exhausted all available remedies. He contended that, because Columbia was not processing grievances, he “protect[ed] hi[m]self” by sending duplicate copies of his formal grievances to the Secretary’s Office, including appeal no. 22-6-16843, which was also a duplicate copy of a formal grievance Columbia failed to process. Moultrie argued that the institution did not start processing his grievances until two days after the Secretary’s Office responded to his appeal no. 22-6-16842, which complained of the breakdown in the grievance process. Moultrie therefore asserted that the institution “made it impossible for him to complete the first two[] steps of the grievance process” within the required timeframe. *See* Fla. Admin. Code R. 33-103.011(1). Moultrie additionally argued that he had satisfied his exhaustion requirements because he was provided the only relief available to him when (1) the Secretary’s Office forwarded appeal no. 22-6-16843 to the Warden for review, and (2) the Inspector General’s Office became involved in investigating his complaints.

The district court granted the Defendants’ motion and dismissed Moultrie’s complaint without prejudice for failure to exhaust. The court applied the two-step test set out in *Turner v. Burnside*, 541 F.3d 1077 (11th Cir. 2008), and concluded that Moultrie

failed at step two because, despite the process being available to him, he failed to properly follow the FDOC's grievance procedure. Moultrie now appeals.

II. STANDARD OF REVIEW

We review a district court's application of the PLRA's exhaustion requirement de novo and any underlying factual findings for clear error. *Geter v. Baldwin State Prison*, 974 F.3d 1348, 1354 (11th Cir. 2020).

III. DISCUSSION

The PLRA provides that no § 1983 action may be brought by a prisoner with respect to prison conditions until they first exhaust their available administrative remedies. 42 U.S.C. § 1997e(a); see *Jones v. Bock*, 549 U.S. 199, 211 (2007). However, "if remedies are unavailable to a prisoner, they need not be exhausted." *Maldonado v. Baker Cnty. Sheriff's Off.*, 23 F.4th 1299, 1307 (11th Cir. 2022).

"In *Turner*, this Court established a two-step process for resolving motions to dismiss for failure to exhaust: (1) looking to the defendant's motion and the plaintiff's response, the district court assesses whether dismissal is proper under the plaintiff's version of the facts; and (2) if dismissal is inappropriate after step one, the court makes specific findings in order to resolve the disputed factual issues related to exhaustion." *Id.* (citation modified); see *Turner*, 541 F.3d at 1082–83. In this case, we are satisfied that the district court followed the *Turner* analysis and made findings "specific enough to provide [our] Court with an opportunity to conduct a meaningful appellate review." *Maldonado*, 23 F.4th at 1307. We also

agree with the court's conclusion that Moultrie failed to properly exhaust his administrative remedies.

As an initial matter, Moultrie argues on appeal, as he did below, that the FDOC's grievance procedures were unavailable to him because prison officials were interfering with the process and the institution was not timely processing his filings. This argument is belied by the record because, as the district court found, "the grievance logs clearly reflect that [Moultrie] knew how to use the grievance process." Indeed, in the period between the alleged incident and filing of the instant case, Moultrie filed 91 informal grievances, 41 formal grievances, and 36 grievance appeals, both related and unrelated to the alleged May 2022 incident. Moultrie attempts to compare his case to *Turner*, in which the warden allegedly ripped up an inmate's formal grievance and threatened to transfer him to another prison far from his family. *See* 541 F.3d at 1081, 1083–84. This comparison misses the mark because Moultrie does not allege that anyone prevented him from filing grievances through threats or intimidation. *See id.*; *see also Ross v. Blake*, 578 U.S. 632, 643–44 (2016).

Further, if Columbia were not timely processing his complaints, Moultrie could have proceeded to the next level of the grievance process and "clearly indicate[d] this fact when filing at the next step." Fla. Admin. Code R. 33-103.011(4). He also could have requested a filing extension if "it was not feasible to file the grievance within the relevant time periods and [he] made a good

faith effort to file in a timely manner.” Fla. Admin. Code R. 33-103.011(2).

Despite the availability of these remedies and provisions, Moultrie failed to properly comply with the FDOC’s grievance procedure. *See Parzyck*, 627 F.3d at 1218; Fla. Admin. Code R. 33-103.005–.007; *see also Jones*, 549 U.S. at 218 (explaining that “[c]ompliance with prison grievance procedures . . . is all that is required by the PLRA to ‘properly exhaust’”). Critically, Moultrie did not file an informal grievance regarding the alleged excessive force used in May 2022. The record does not reveal any informal grievances attached to or associated with grievance appeal no. 22-6-16843, the only filing directly addressing Moultrie’s excessive force claims.

Moultrie contends that he filed a formal grievance that was a duplicate copy of this appeal, but it “disappeared” when the institution failed to process his filings. However, even if Moultrie filed this missing formal grievance, he was not permitted to make this complaint directly with the Warden, as excessive-force claims are not one of the limited issues for which the FDOC allows a prisoner to forego the informal-grievance step. *See Fla. Admin. Code R. 33-103.005(1)*. Contrary to Moultrie’s contentions, FDOC procedure 602.033 did not allow him to bypass the informal-grievance step because this procedure applies only to video retention requests, not claims of excessive force. For the same reasons, Moultrie could not file appeal no. 22-6-16843 directly with the Secretary’s Office. *See id.* (listing the limited circumstances under

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which “[i]nmates may proceed directly to the Office of the Secretary”).

Regardless, even if we assume that Moultrie somehow satisfied the first two steps of the grievance process or otherwise met the criteria to bypass these requirements, he still failed to exhaust his remedies at the third and final step. The Secretary’s Office returned appeal no. 22-6-16843 without action for procedural defects, rather than resolving the merits of Moultrie’s arguments. While the Secretary’s Office did forward the filing to the Warden, this evidence indicates only that the Warden may have substantively reviewed Moultrie’s complaint outside of the grievance process, not that the Secretary’s Office addressed and resolved the merits of Moultrie’s excessive force claims. *See Woodford v. Ngo*, 548 U.S. 81, 90, 93 (2006).

Moultrie also points to a letter the Warden sent him in June 2022 stating that his allegations would be forwarded “to the Office of Inspector General for review and handling” to suggest that he exhausted his remedies. However, this fact is irrelevant to the instant analysis because seeking review from the Inspector General is not a part of the FDOC’s grievance procedure and is therefore outside of “the boundaries of proper exhaustion.” *Dimanche v. Brown*, 783 F.3d 1204, 1211 (11th Cir. 2015) (citation modified); *see Parzyck*, 627 F.3d at 1218.

We therefore find no error in the district court’s determination that Moultrie failed to properly exhaust his available

administrative remedies prior to filing the instant § 1983 action in federal court. *Geter*, 974 F.3d at 1354.

IV. CONCLUSION

We **AFFIRM** the dismissal of Moultrie's complaint for failure to exhaust administrative remedies.