NONPRECEDENTIAL DISPOSITION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 November 23, 2021*
Decided November 29, 2021

Before

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 21-1560

ANTWAN I. SLATER, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Western District of Wisconsin.
v.	No. 17-cv-417-wmc
NICOLE LERVIK, et al., *Defendants-Appellees*.	William M. Conley, *Judge*.

O R D E R

A prison disciplinary officer found Antwan Slater guilty of possessing prohibited documents and disciplined him. Slater appealed to the warden, who then returned the case to the hearing officer to consider additional evidence; the officer reached the same decision. Slater did not appeal this second decision. When Slater later sued several

* 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).

prison officials for seizing his documents, the district court entered summary judgment because Slater's failure to appeal meant he had not exhausted his administrative remedies. Because a second appeal to the warden was available to Slater, we affirm.

Slater's disciplinary proceeding began in 2016, when a prison guard searched his cell at the Columbia Correctional Institution in Wisconsin. She found "what appeared to be multiple service contracts and fraudulent papers" and filed a conduct report accusing Slater of engaging in fraud and an unauthorized enterprise. This was a "major offense" under the prison regulations, requiring a disciplinary hearing. *See* WIS. ADMIN. CODE DOC §§ 303.71(1), .72, .80(1)(c) (2014). (We cite the version of the Code then in effect.) At that hearing, Slater argued that the documents were his family's and friends' contact information and some model business plans from a financial literacy course he attended at another prison. The hearing officer excluded Slater's evidence of this purported course, found Slater guilty, ordered the papers destroyed, and sentenced him to 30 days' cell confinement.

Slater timely appealed to the warden, arguing, among other things, that the hearing officer should not have excluded his evidence. The warden returned the case back to the hearing officer after checking the box on the appeal form ordering "completion/correction of the record," *id.* § 303.82(3)(d), but without otherwise commenting. The hearing officer reevaluated the record—now including Slater's evidence—without holding a second hearing and again found Slater guilty and imposed the same punishment.

Slater did not appeal this second determination to the warden. Instead, he filed two complaints through the prison's ordinary grievance procedure. Both were denied, and Slater appealed only the second denial to the statewide complaint examiner, who affirmed.

Slater then sued several prison employees under 42 U.S.C. § 1983, alleging they violated his First and Fourteenth Amendment rights by destroying his papers and punishing him for possessing them. Eventually, the defendants moved for summary judgment on the ground that Slater had failed to exhaust administrative remedies. *See* 42 U.S.C. § 1997e(a). The district court granted the motion. It reasoned that Slater was obligated to appeal the second determination of guilt to the warden to exhaust his disciplinary remedies and his other grievances were not proper alternatives to the disciplinary appeal. The court dismissed the suit without prejudice, and Slater now appeals that final judgment. *See Hernandez v. Dart*, 814 F.3d 836, 841 (7th Cir. 2016).

On appeal, Slater argues only that he exhausted his remedies through the disciplinary process. Section 1997e(a) requires prisoners to exhaust "such administrative remedies as are available." Because there is no dispute that Slater did not appeal the second disciplinary decision, he failed to exhaust unless a second appeal was "unavailable" to him. *Ross v. Blake*, 578 U.S. 632, 642 (2016); *Reid v. Balota*, 962 F.3d 325, 329 (7th Cir. 2020).

Slater contends that the prison regulations prohibited a second appeal. He reasons that the regulations allow an inmate to appeal "a disciplinary decision under … § 303.80." WIS. ADMIN. CODE DOC § 303.82(1). Section 303.80, in turn, requires a hearing before an officer can find the inmate guilty of a major offense. *Id.* § 303.80(6)(d). So, his argument continues, the lack of a second hearing for the second determination of guilt meant that it was not a decision "under § 303.80" and thus an appeal was unavailable through § 303.82. He otherwise argues that he was not obligated to appeal after the prison broke its own rules by not holding a second hearing.

Slater's reading of the regulations is unnaturally stilted. Nothing in their text links the right to appeal to whether a hearing occurred. Under § 303.80, the prison must offer a hearing before it makes a major disciplinary decision, but § 303.82 makes the decision itself appealable, not the hearing. If the disciplinary officer wrongly deprived Slater of a second hearing (as he believes), then that was a reason to appeal, not an excuse not to. The appeal is the warden's opportunity to correct procedural errors. *See id.* § 303.82(3)(d). Were a hearing a prerequisite to an appeal, as Slater contends, then the prison would have deprived itself of this opportunity to correct a potentially significant error before litigation—frustrating the very purpose of exhaustion. *See Schillinger v. Kiley*, 954 F.3d 990, 995 (7th Cir. 2020) (citing *Woodford v. Ngo*, 548 U.S. 81, 89 (2006)). We do not read the prison regulations to be so self-defeating. And Slater does not argue that any prison official misled him into interpreting the rules to prohibit an appeal. *See Ross*, 578 U.S. at 644 & n.3; *Pavey v. Conley*, 663 F.3d 899, 906 (7th Cir. 2011).

In any event, our result would be the same if we accepted Slater's premise that a hearing was necessary before he could appeal. The specific text he relies on for this rule states that a hearing officer shall find the inmate guilty or not guilty "after the [disciplinary] hearing." WIS. ADMIN. CODE DOC § 308.80(6). The second disciplinary decision did come after his hearing, albeit not immediately so. Indeed, the decision on correction of the record specifically states it is relying on the original hearing two months earlier. Even on Slater's reading of the regulations, then, a second appeal was

available to him and thus he needed to exhaust that remedy before suing in federal court.

As an alternative argument, Slater says that his first appeal, on its own, was sufficient to exhaust because the regulations were ambiguous regarding whether an inmate can appeal a correction of the record. But ambiguity (assuming there is any) would not be enough to make a remedy unavailable. Regulations must be "opaque," rather than merely susceptible to multiple interpretations, to make a remedy unavailable. *Ross*, 578 U.S. at 643–44. In the face of mere ambiguity, an "inmate should err on the side of exhaustion." *Id.* at 644.

AFFIRMED