

NONPRECEDENTIAL DISPOSITION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 April 4, 2024*

Decided May 6, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-2123

ANTONIO JONES,
Plaintiff-Appellant,

v.

ARTHUR DEGRAVE and MARSHA
GLEASON,
Defendants-Appellees.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 20-CV-746

Nancy Joseph,
Magistrate Judge.

ORDER

Antonio Jones, a Wisconsin prisoner, sued prison officials alleging two claims—that they unlawfully disciplined him in retaliation for filing grievances and unconstitutionally strip searched him. The district court entered summary judgment for the defendants, correctly ruling that Jones failed to exhaust administratively the first

* 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).

claim, and the evidence could not support a verdict for Jones on the second. Thus, we affirm.

We recount the facts in the light most favorable to Jones and draw all reasonable inferences in his favor. *Moore v. W. Ill. Corr. Ctr.*, 89 F.4th 582, 590 (7th Cir. 2023). The claim about the strip search arises out of work that Jones did in the kitchen at Green Bay Correctional Institution under the supervision of Marsha Gleason, a food service leader. One day while working, he spilled some liquid. He went to retrieve a mop and bucket from a janitorial closet to clean up the area. After Jones cleaned the spill, he brought the mop back to the closet and emptied the mop water into a draining area. While doing so, he slipped and hurt himself, but after some time in the closet, he recovered. When Gleason saw Jones leave the closet, she noticed that he was limping and had spent more time than usual there. Thinking that the limp and extra time in the closet suggested that Jones had hidden contraband on his body, she “badger[ed]” Jones with questions about why he had taken so long in the closet and what he had stolen. Jones refused to answer. Cursing at least twice, Gleason threatened to ask Arthur DeGrave, a correctional officer whom Jones believes had a romantic past with Gleason, to request a strip search. DeGrave then summoned Jones—whom DeGrave had allowed to go to the bathroom and who no longer limped—to question him. DeGrave suggested that Jones would “have nothing to worry about” from a strip search that he ordered.

Jones was then searched. First, a correctional officer approached Jones, stating that DeGrave had ordered the officer to “pat search” Jones. Jones had to lift his shirt and show his waistband. The search did not reveal anything, and the officer apologized. Gleason and DeGrave then demanded that Jones tell them where he put the contraband. After Jones insisted that he had nothing, Gleason remarked, “We’ll see after your strip search.” She laughed and told DeGrave to “strip search the asshole.” DeGrave had two other correctional officers take Jones to a private, designated room for the strip search. Jones later saw Gleason, who was looking “and laughing at” him.

The claim of retaliation arises out of events that began the next day. Jones and another prisoner had completed their tasks in the kitchen when DeGrave asked if Jones should start another task. Jones replied that someone else was taking care of that task. DeGrave walked away but returned after a few minutes to repeat the question. About ten days later, Jones received a conduct report in which DeGrave accused Jones of disobeying work orders. Jones contested the report but ultimately received five days’ work without pay. After Jones appealed the disposition—arguing that he had obeyed orders—but before the decision was administratively affirmed, he filed a grievance. In

it, he accused DeGrave of issuing the conduct report to retaliate against him for filing an earlier grievance against DeGrave and Gleason about the strip search. The prison dismissed Jones's new grievance on the ground that, because his contention of retaliation was related to the conduct report and was therefore the subject of ongoing disciplinary proceedings, the prison's rules barred him from separately raising the contention through the grievance process.

Jones responded with this suit. He alleges, first, that Gleason and DeGrave strip searched him in violation of both the Fourth and Eighth Amendments. He also alleges that they retaliated against him with the conduct report in violation of the First Amendment. The district court permitted Jones to proceed on a claim that the strip search violated the Eighth Amendment and that Gleason and DeGrave retaliated against him.

The defendants moved for summary judgment in two stages. First, they argued that Jones had not properly exhausted his administrative remedies for his retaliation claim. A magistrate judge, presiding with the parties' consent, *see* 28 U.S.C. § 636(c), granted the defendants' motion, concluding that Jones had failed to exhaust because he did not raise his claim of retaliation in response to the conduct report; he instead had incorrectly submitted the claim in a separate administrative grievance. Later, the defendants moved for summary judgment on the strip-search claim. The district court granted this motion too. It reasoned that Jones could not show an Eighth Amendment violation because he did not rebut the evidence that the strip search had some penological justification: Even if the defendants had impermissible motives (such as to harass Jones or to delight themselves), the record indisputably showed another, valid justification—they reasonably suspected that Jones had hidden contraband. Jones moved to alter or amend the judgment, but the district court denied the motion.

Jones challenges the ruling that he failed to exhaust his administrative remedies on his First Amendment claim that the discipline of his conduct report was retaliatory. Under the Prison Litigation Reform Act, 42 U.S.C. § 1997e, prisoners may not bring a claim in federal court unless they first exhaust the available administrative remedies for that claim in the manner specified by the state. *Pozo v. McCaughtry*, 286 F.3d 1022, 1023 (7th Cir. 2002). Under Wisconsin's rules, prisoners may file a grievance about discipline "only after exhausting ... [t]he disciplinary appeal process." WIS. ADMIN. CODE DOC § 310.06(2)(b). To exhaust the disciplinary appeal process, a prisoner must "provide a statement" explaining why discipline is unwarranted and appeal any adverse decision. *Id.* §§ 303.77(2)(b); 303.82(1). Jones contends that, because Gleason and DeGrave

concocted the conduct report to retaliate, the report was unwarranted. But he concedes that he did not raise this contention in his “statement” opposing the conduct report or on internal appeal. Thus, Jones did not exhaust his retaliation claim in the manner Wisconsin requires. *See Schillinger v. Kiley*, 954 F.3d 990, 996 (7th Cir. 2020).

That brings us to the claim about the strip search. Only strip searches conducted “totally without penological justification” violate the Eighth Amendment. *See Whitman v. Nesic*, 368 F.3d 931, 934 (7th Cir. 2004). The record demonstrates that the strip search here had at least some penological basis. It is undisputed that Jones spent undue time in the janitorial closet, came out walking with a limp, and refused to answer questions to explain his delay and limp. From their observations of Jones’s suspicious behavior and insubordination, the officers could plausibly decide that prison security required a strip search to reveal if Jones had stolen and concealed something under his clothing.

Jones responds that the district court should have allowed this claim to go to trial for two reasons. First, he argues that, because DeGrave let him go to the bathroom before the search and knew that the pat down revealed nothing, DeGrave did not suspect that Jones had concealed contraband. But after letting Jones go to the bathroom and learning about the unrevealing pat down, DeGrave could still have reasonably thought that Jones had hidden contraband on his body: Jones’s delay in the closet and suspicious limp remained unexplained; his sudden loss of the limp after the trip to the bathroom and the unrevealing pat down could reasonably suggest that Jones had moved the contraband on his body. Second, Jones argues that Gleason and DeGrave had an intimate past and a shared antagonism toward Jones, whom Gleason considered an “asshole,” thus evincing an improper motive for the search. But even if they had an improper motive for the search, as long as some penological justification for the search is present, as it was, the search is compatible with the Eighth Amendment. *Id.*

Finally, Jones argues that the district court should have allowed his Fourth Amendment claim about the strip search to proceed. Strip searches can violate a prisoner’s Fourth Amendment rights. *See Henry v. Hulett*, 969 F.3d 769 (7th Cir. 2020) (en banc). But any error in cutting off this claim was harmless because, based on the record on which Jones relies, the search complied with the Fourth Amendment. To determine the reasonableness of a strip search under that amendment, we look at its manner, place, and purpose. *Id.* at 781. Jones argues that, under the Fourth Amendment, an impermissible purpose alongside a permissible one can invalidate the search, and the defendants’ laughter and delight in the search shows an impermissible subjective purpose. But under the Fourth Amendment, we do not consider the officers’ subjective

states of mind, *id.*, and Jones has not presented evidence that the strip search was motivated, even in part, by an impermissible objective purpose.

AFFIRMED