NONPRECEDENTIAL DISPOSITION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 July 11, 2023*
Decided July 20, 2023

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-2460

ANDRE V. POWELL,
Plaintiff-Appellant,

v.

CHARLES BOWEN, et al.
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division.

No. 3:20-cv-698

Jon E. DeGuilio,
Judge.

O R D E R

Andre Powell, a former Indiana prisoner, sued prison officials under 42 U.S.C. § 1983 for allegedly mishandling his grievances and retaliating against him for filing them. The district judge dismissed most defendants at screening and entered summary

*We have agreed to decide the case without oral argument because the briefs and the 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).

judgment for the rest after determining that Powell had not exhausted the available administrative remedies. Powell challenges both decisions, and we affirm.

We accept the facts alleged in Powell's complaint as true with respect to the dismissed claims, *see Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020), and for the claims that reached summary judgment, we present the facts in the light most favorable to Powell and draw reasonable inferences in his favor, *see Douglas v. Reeves*, 964 F.3d 643, 645 (7th Cir. 2020). In August 2018, Powell, then a parolee, was participating in a work-release program at the South Bend Community Re-Entry Center. He was reassigned to a job he had previously held at the Indiana Department of Natural Resources (DNR). He found the job objectionable, though he does not explain why. Powell interpreted the reassignment as an act of retaliation for grievances he had filed. The effects of the reassignment were compounded, he alleges, because he was not informed of the reassignment and therefore missed work. A caseworker issued a conduct report based on his absence—a move Powell interpreted as further retaliation.

That September, Powell submitted one grievance about his job assignment and another about his conduct report; he believed both acts to be part of a retaliatory "set up" by Cristina Stobaugh, an administrator at the facility, and Charles Bowen, the warden. Four days after he submitted the grievances (which were ultimately denied), Powell was transferred to the more restrictive Westville Correctional Facility pending the outcome of a hearing on the conduct report for missing his DNR job. After disciplinary proceedings, Powell lost 90 days of earned credit time. (He challenged this in a petition under 28 U.S.C. § 2254, but that case was mooted when he was released from custody. *See Powell v. Indiana Parole Bd.*, No. 21-2167, 2022 WL 2208878, at *1 (7th Cir. June 21, 2022).) Powell also says that, during the transfer, Bowen and Stobaugh ordered a correctional officer to confiscate authorized commissary items from him.

Powell submitted one last grievance in October, alleging that the facility transfer was retaliation for the September grievances. Stobaugh, who reviewed the October grievance, determined that it concerned a "Classification or Disciplinary Hearing Issue" and therefore fell outside the scope of the grievance process. Powell did not administratively appeal this decision.

In August 2020, Powell—who was by then detained in the Elkhart County Jail for reasons he does not explain—sued multiple defendants from the re-entry center under 42 U.S.C. § 1983. He alleged that Bowen and Stobaugh retaliated against him for exercising his rights under the First Amendment when they changed his work

assignment, transferred him to Westville, and ordered the confiscation of his property to punish him for filing grievances. He also asserted that the officer who took his property violated his due-process rights under the Fourteenth Amendment, as did other officials, including Stobaugh, by failing to act on or improperly rejecting his grievances.

The district judge dismissed the bulk of the complaint at screening under 28 U.S.C. § 1915A. The judge explained that the claim about the retaliatory job reassignment failed because Powell did not allege anything about the job to suggest that the move was so punitive as to deter an inmate of ordinary firmness from filing grievances. *See FKFJ, Inc. v. Village of Worth*, 11 F.4th 574, 586 (7th Cir. 2021). The judge next dismissed Powell's claim about an improper conduct report because the disciplinary violation that resulted in his loss of good time had not been overturned. *See Edwards v. Balisok*, 520 U.S. 641, 643 (1997) (citing *Heck v. Humphrey*, 512 U.S. 477, 487 (1994)). As to Powell's claim that Stobaugh had mischaracterized the subject of his October grievance, the judge concluded that her alleged failure to remedy Powell's grievance was not a constitutional violation. *See Est. of Miller by Chassie v. Marberry*, 847 F.3d 425, 428 (7th Cir. 2017). Finally, Powell did not state a retaliation claim against the officer who took his commissary items because Powell did not allege that the officer knew of, and was therefore motivated by, any grievance. Nor did he have a viable due-process claim because the Indiana Tort Claims Act provides an adequate post-deprivation remedy for property loss caused by the random and unauthorized acts of a state employee.

The judge then allowed Powell to proceed on his claims that Stobaugh and Bowen retaliated against him by transferring him to Westville and directing the officer to take his property. But the defendants moved for summary judgment on the ground that Powell had failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), because the grievances he filed did not address the prison transfer. Powell contended that he had exhausted available remedies and that further remedies were effectively unavailable because the grievance process was "obsolete" and the officials did not handle his grievances in good faith. He also argued that the notice of a tort claim he had submitted to the Indiana Department of Correction addressed the confiscation of his property and therefore satisfied his exhaustion obligations for that claim. Finally, Powell argued that, because he was no longer in the custody of the Department, he was not subject to its grievance process.

The judge entered summary judgment for the defendants. He determined that no grievance addressed either Powell's transfer to Westville or the taking of his property, and a tort claim was not a substitute for the grievance process. Further, Powell's belief that the grievance process was futile and the fact that he was no longer incarcerated where the events at issue took place did not excuse him from exhausting. Powell appeals, and we review de novo both the screening order and the summary judgment for the defendants. *Schillinger*, 954 F.3d at 994–95.

We review de novo both the dismissals at screening, *Schillinger*, 954 F.3d at 994, and the summary judgment decision, *Douglas*, 964 at 645. On appeal, Powell first contends that the district judge improperly dismissed the claim that his work reassignment was retaliatory because the timing supports an inference of retaliation. But even if Powell adequately alleged a retaliatory motive, he also had to allege facts suggesting that he experienced an action adverse enough to deter a reasonable person's expressive conduct. *Douglas,* 964 F.3d at 646. Because Powell's complaint contains no details about the DNR job, he provided no basis for inferring that it imposed a substantial hardship. *Id.* at 646–47.

Likewise, Powell did not state a claim against the corrections officer who confiscated his commissary items. Indiana's Tort Claims Act provides an adequate remedy for prisoners deprived of property by the random and unauthorized acts of state employees. *See Wynn v. Southward*, 251 F.3d 588, 593 (7th Cir. 2001) (citing *Hudson v. Palmer,* 468 U.S. 517, 533 (1984)). Powell contends that, because he does not expect to obtain relief in state court, the remedy is inadequate. But his right is to adequate process—not to a specific outcome—and state law provides it.

Powell also challenges the dismissal of his claim against Stobaugh for misinterpreting the content of the October grievance about the facility transfer. He contends that he stated a due-process claim because an official cannot, under Department policy, address a grievance that mentions her. But prison regulations about processing grievances do not create interests protected by the Due Process Clause, so violating them does not in itself give rise to constitutional liability. *See Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011). (True, prisoners have a due-process right to an impartial decision-maker in disciplinary proceedings, *Wolff v. McDonnell*, 418 U.S. 539, 570–71 (1974), but Powell's claim is about the administrative grievance process.) Further, prison officials cannot incur constitutional liability solely from their review of prisoner grievances. *George v. Smith*, 507 F.3d 605, 609–10 (7th Cir. 2007). Therefore, Powell did not state a due-process claim.

Powell next argues that his claims that prison officials "set him up" to miss his DNR job—which resulted in a disciplinary violation and the loss of earned credit time—are not barred under *Heck v. Humphrey*, 512 U.S. 477, 487 (1994) (unless a criminal conviction has been overturned, suits under section 1983 that necessarily imply the invalidity of a criminal conviction are precluded); *Edwards*, 520 U.S. at 643 (applying *Heck* rule to prison disciplinary proceedings). He contends that his discharge from parole earlier than he expected, despite his loss of good-time credit, was implicitly a favorable termination of the violation. But release from custody in the ordinary course of serving a sentence is not a "favorable termination," so the *Heck* bar remains. *See Savory v. Cannon*, 947 F.3d 409, 431 (7th Cir. 2020) (en banc).

Powell also maintains that he administratively exhausted his retaliation claims against Stobaugh and Bowen because his October grievance mentioned the facility transfer. A state's prison grievance process provides the substance of what "proper" exhaustion under the PLRA entails. *Jones v. Bock*, 549 U.S. 199, 218 (2007). As the district judge noted, we require strict compliance with the exhaustion requirement, and so a prisoner must take each step prescribed by the state's regulations. *Williams v. Rajoli*, 44 F.4th 1041, 1045 (7th Cir. 2022). Here, Powell does not dispute that he never appealed the rejection of his October grievance for impermissibly raising an issue of classification or discipline. An appeal is a required step in the Department's process. *See* Offender Grievance Process, Ind. Dep't of Corr. Pol'y & Admin. Procedures No. 00-02-301, § XII (eff. Oct. 1, 2017). Indeed, the grievance records provided by the defendants show that Powell is well aware of this; he has formally appealed denied grievances at least 11 times. Powell believes that further action on this grievance would have been futile, but that does not excuse him from compliance. *See Williams*, 44 F.4th at 1045.

Finally, Powell contends that because he has since left the state prison system, he is no longer subject to the exhaustion requirement. We have recognized that leaving a facility can make remedies unavailable if as a result a prisoner is unable to comply with grievance procedures. *See King v. McCarty*, 781 F.3d 889, 896 (7th Cir. 2015), *overruled on other grounds by Henry v. Hulett*, 969 F.3d 769 (7th Cir. 2020) (en banc). But Powell argues that he should not have been required to exhaust, not that he was unable to. He was: all of Powell's claims arose while he was in IDOC custody, and the defendants showed that the grievance process was available to him during that time. Further, he does not dispute the district judge's finding that, as a detainee or inmate in the Elkhart County Jail, Powell is still a "prisoner" for the purpose of the PLRA. *See* 42 U.S.C. § 1997e(a), (h). Therefore, he was required to exhaust administrative remedies.

AFFIRMED