

NONPRECEDENTIAL DISPOSITION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 21, 2023*

Decided November 22, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1885

LESTER DOBBEY,
Plaintiff-Appellant,

Appeal from the United States District
Court for the Central District of Illinois.

v.

No. 22-cv-4173-JBM

UPTOWN PEOPLE'S LAW
CENTER, et al.,
Defendants-Appellees.

Joe Billy McDade,
Judge.

ORDER

Lester Dobbey appeals the dismissal of his complaint, which alleged that employees of the Illinois Department of Corrections conspired with a legal services organization to violate his constitutional rights. Because Dobbey failed to exhaust his

* The Appellees were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the brief 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).

administrative remedies or state a claim for relief, we affirm with a slight modification to the judgment.

In October 2020, while Dobbey was incarcerated at Hill Correctional Center in Galesburg, Illinois, he received a letter from the Uptown People's Law Center describing how to submit paperwork to obtain an economic stimulus payment. The letter explained that an applicant should mail a tax form to the Internal Revenue Service before the applicable deadlines, and it clarified that Uptown was working with the Department of Corrections to mail the paperwork but was not providing legal advice or representation. Dobbey completed the form, placed it in an envelope addressed to the IRS, and submitted it with the voucher required by the prison's mail system to pay for certified mailing. When Dobbey did not receive a return receipt, he inquired about the status of his mail. On October 20, the mailroom supervisor returned Dobbey's voucher and explained that Uptown was picking up and delivering the forms to the IRS.

Ten days after receiving this information, Dobbey filed a formal prison grievance. He stated he was not given notice that Uptown would obtain his mail and that it was unlawful for Uptown to have the private information (such as his Social Security number) contained on the tax form. The grievance officer determined that no violation of policy or procedure occurred and encouraged Dobbey to contact the IRS or Uptown for additional information. On November 20, 2020, at the first stage of review, the Chief Administrative Officer concurred. Dobbey appealed again, but the Administrative Review Board received his materials on December 29, 2020, more than 30 days after the prior officer's decision, and it denied the appeal for that reason.

Dobbey then sued Uptown and various Department of Corrections officials under 42 U.S.C. § 1983, alleging that the defendants infringed his right to send mail to the IRS and conspired to interfere with his mail, in violation of his rights under the First Amendment. He also asserted that those actions violated Illinois law.

The district court screened and dismissed the complaint under 28 U.S.C. § 1915A. It determined that Dobbey's claim was untimely because he filed his complaint on November 30, 2022, more than two years after his claim accrued on October 20, 2020. It also dismissed the complaint for failure to state a claim, concluding that Dobbey had alleged only a fear of future harm (possible identity theft or fraud).

Dobbey filed a motion to vacate the judgment under Rule 59(e) of the Federal Rules of Civil Procedure, arguing that the statute of limitations was tolled while he exhausted his administrative remedies as required by the Prison Litigation Reform Act.

But the district court determined that tolling did not apply because Dobbey did not properly exhaust. It also noted that Dobbey did not contest his failure to state a claim.

On appeal, we begin with whether Dobbey's complaint was untimely, reviewing the district court's decision de novo. *Wilson v. Wexford Health Sources, Inc.*, 932 F.3d 513, 517 (7th Cir. 2019). Dobbey filed within the two-year limitations period for § 1983 claims brought within Illinois. *See Bowers v. Dart*, 1 F.4th 513, 518 (7th Cir. 2021). As Dobbey points out, under 735 ILCS 5/13–216 and 42 U.S.C. § 1997e(a), the statute of limitations was tolled while he pursued administrative remedies. *Johnson v. Rivera*, 272 F.3d 519, 522 (7th Cir. 2001). The limitations period resumed when the Review Board denied his appeal on February 12, 2021. *Bowers*, 1 F.4th at 518. Dobbey had to file suit by February 12, 2023, and so the complaint he filed on December 1, 2022, was timely.

The district court, however, concluded that tolling did not apply because Dobbey failed to exhaust administrative remedies properly. We are aware of no authority for this proposition. Proper exhaustion is an independent prerequisite for federal litigation. *See Woodford v. Ngo*, 548 U.S. 81, 90–91, 93 (2006). There is no need to link it to tolling principles. If the district court is correct that Dobbey failed to exhaust properly, we may affirm the dismissal of the claim against prison officials on that ground.

Dobbey disputes the conclusion on exhaustion, arguing first that exhaustion is an affirmative defense that the defendants must raise. But when this defense is “plain from the face of the complaint,” a district court does not need to wait for the defendants to raise it. *Walker v. Thompson*, 288 F.3d 1005, 1009 (7th Cir. 2002). Dobbey attached to his complaint the Review Board's decision denying his appeal as untimely, and that decision shows his failure to exhaust administrative remedies properly. *Woodford*, 548 U.S. at 95. Dobbey counters that the Review Board had the discretion to assess the merits of his appeal despite its untimeliness. Yet when prison officials reject a grievance as untimely, even if the rules permit them to address the merits, proper exhaustion has not occurred. *See Pozo v. McCaughtry*, 286 F.3d 1022, 1024–25 (7th Cir. 2002).

Last, Dobbey argues that there is no proof that administrative remedies were available. But his complaint is the proof. He filed his grievance without difficulty and received a “Response to Offender's Grievance” form, which contained instructions for how to appeal at each level. After Dobbey's initial appeal of the grievance officer's decision, the form came back, informing him that the Chief Administrative Officer had determined that his grievance was meritless on November 20, 2020. And it stated that the Administrative Review Board had to receive his appeal within 30 days of this decision, provided a mailing address for Board, and told him what to include. He

signed this form to make his final appeal. The prison therefore communicated the administrative-remedy process in a way reasonably likely to be understood. *Roberts v. Neal*, 745 F.3d 232, 235 (7th Cir. 2014). Thus, Dobbey did not properly exhaust his available administrative remedies.

That takes care of the claims against the Department of Corrections personnel, but exhaustion is not a defense for Uptown. We take the allegations in the complaint as true and so assume for present purposes that Uptown is a proper defendant in this § 1983 action because it coordinated conduct with the Department to intercept Dobbey's mailing to the IRS. A private actor can act under state law when the government delegates a public function to it or when it participates in joint action with the state. *Camm v. Faith*, 937 F.3d 1096, 1105 (7th Cir. 2019).

But Dobbey failed to state a claim for a violation of the First Amendment. Dobbey has a right to send mail. *Rowe v. Shake*, 196 F.3d 778, 782 (7th Cir. 1999). The right is not unlimited; for example, prisons can monitor and confiscate prisoner correspondence, if doing so serves legitimate government interests. *See id.*; *Williams v. Hansen*, 837 F.3d 809, 810 (7th Cir. 2016). But evaluating the defendants' justification is unnecessary here because Dobbey does not allege any interference with his right to send mail. According to the complaint, Uptown was working with the Department to transmit applications for economic stimulus payments at no cost to prisoners, and that is apparently what occurred. Dobbey does not allege that Uptown never delivered his form to the IRS or that it unduly delayed his mail. Even if he had, a single interference with his mail would be insufficient to state a First Amendment claim. *See Rowe*, 196 F.3d at 782 (affirming dismissal where plaintiff alleged sporadic delays in mail delivery); *see also Sizemore v. Williford*, 829 F.2d 608, 610–11 (7th Cir. 1987) (explaining that isolated loss or theft of mail is insufficient for First Amendment claim).

To the extent that Dobbey has concerns about the theft of information contained in his mail, that is not a First Amendment issue. It might implicate state law, and Dobbey indeed asserted state-law theories of relief sounding his right to privacy. The district court did not address any state-law claims, though it dismissed the entire action with prejudice. A better course would have been to relinquish supplemental jurisdiction over any state-law claim upon dismissal of the First Amendment claim. 28 U.S.C. § 1367(c)(3); *Al's Serv. Ctr. v. BP Prods. N. Am., Inc.*, 599 F.3d 720, 727 (7th Cir. 2010). We therefore modify the judgment to reflect that, with respect to any claims under state law, the dismissal is without prejudice.

AFFIRMED AS MODIFIED