

NONPRECEDENTIAL DISPOSITION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 April 5, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-3095

BILLY CANNON,
Plaintiff-Appellant,

v.

BRANDON DROST, et al.,
Defendants-Appellees.

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

No. 21-cv-636-jdp

James D. Peterson,
Chief Judge.

ORDER

Billy Cannon, a Wisconsin prisoner, appeals a summary judgment order against him based on his failure to exhaust administrative remedies in connection with his claim of retaliation under the First Amendment. *See* 42 U.S.C. § 1983. Because the

* 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).

undisputed facts show that Cannon did not comply with the prison's grievance process in the time and manner required, we affirm.

We recount the following facts in favor of Cannon, the nonmoving party. *See Williams v. Rajoli*, 44 F.4th 1041, 1045 (7th Cir. 2022). In September 2021, Cannon, then incarcerated at Stanley Correctional Institution, filed a complaint with the Department of Corrections about a compromised member of the prison staff who was allegedly bringing contraband into the facility. When interviewed about the allegations, Cannon admitted that he and his cellmate had sought to have the staff member bring in contraband for them. Cannon then stated that he had set up a "sting" operation to trap the staff member and make sure the contraband didn't enter the prison.

Cannon was placed into temporary lock-up and later issued a conduct report for soliciting and lying about an employee. A due process hearing¹ was held, and Cannon was found guilty of the soliciting charge but not guilty of the lying charge. He received 90 days in disciplinary segregation. Records from Cannon's hearing show that he challenged "the validity of the conduct report and the veracity of its content" and additionally argued that the prison could not prove its case without the testimony of the staff member, who had since left his position with the Department.

Cannon filed, in successive fashion, three appeals with supporting documentation. According to a letter he received from the deputy warden, prison policy permitted only one appeal per conduct report; additional materials would not be returned to the inmate. Weeks later, the warden affirmed the disposition and sentence. Cannon received back only one of his submitted appeal forms—a form that raised arguments concerning the witnesses who could testify at the hearing.

According to an authenticated copy of Cannon's inmate-complaint history, he then filed two grievances through the Department's inmate-complaint system. Both grievances expressed Cannon's wish to receive the missing appeal documents for "future litigation." Nothing in the record shows that the grievances mentioned retaliation. Cannon's first complaint was dismissed because, as the warden explained, Cannon had been provided with the appeal decision in accordance with prison policy. Cannon's second complaint was rejected as untimely because it was filed 28 days after he received the appeal decision—well beyond the Department's 14-day limit, *see* WIS. ADMIN. CODE DOC § 310.07(2)—and Cannon neither argued nor showed that he had

¹ Wisconsin uses the phrase "due process hearing" to describe this type of preliminary disciplinary proceeding. WIS. ADMIN. CODE DOC § 303.80.

good cause for filing late. Cannon was notified of his right to appeal the denial of both grievances but took no steps to do so.

Cannon filed this § 1983 suit against the correctional officers who interviewed him, the warden, and other prison employees. He alleged that the defendants violated his First Amendment rights by placing him in temporary lock-up and issuing him a conduct report in retaliation for filing the complaint against the staff member.

The defendants moved for summary judgment on the ground that Cannon failed to exhaust his administrative remedies. The defendants argued that the available records from Cannon's due process hearing and administrative appeal showed that he failed to raise his retaliation claim as a defense at either step, as required by prison rules. *See* WIS. ADMIN. CODE DOC §§ 303.80, 303.82(1). They additionally argued that Cannon's inmate-complaint history showed that he had not, as also required, properly appealed the warden's decision through the inmate-complaint system, *see id.* §§ 303.82(4), 310.06(2)(b), which itself included multiple stages of review, *see id.* §§ 310.10(10), 310.12(1), 310.13.

The district court granted the defendants' motion. The court explained that the defendants had offered evidence showing that Cannon did not raise the retaliation defense at his due process hearing and appeal. And though Cannon argued that he had done so, the court continued, he had not attested to that fact, so no reasonable juror could agree with him. Moreover, Cannon's authenticated inmate-complaint history showed that he had not filed a complaint alleging retaliation, and to the extent he had attempted to complain of retaliation elsewhere, those attempts "failed to exhaust Cannon's retaliation claim because they were not a part of the DOC's established procedures for lodging complaints related to conduct reports."

Cannon filed a motion to reconsider explaining that he had, in fact, provided a sworn declaration in his summary judgment materials rebutting the defendants' evidence. (It is unclear why the declaration did not make it into the record with Cannon's brief opposing summary judgment, but he offered evidence verifying that he had submitted it.) In the declaration, Cannon attested that he had told the official transcribing his due process hearing "that the conduct report and this process was an act of retaliation," but "she refuse[d] to type the retaliation claim into my statement because she had control of the computer and said that it was not relevant to the conduct report." Cannon also attested that he had raised his retaliation defense in the missing appeal documents and other channels, including the prison's grievance system.

The district court accepted the declaration as evidence but nevertheless denied Cannon's motion. Regarding the transcription at the due process hearing, the court concluded that Cannon's statement was "insufficient to exhaust administrative remedies because it did not identify the protected conduct that allegedly caused prison officials to issue the conduct report and start disciplinary proceedings." In the court's view, no reasonable juror could conclude that Cannon's "unexplained allegation of retaliation" during the due process hearing gave the prison notice of the protected activity undergirding his retaliation claim.

On appeal, Cannon argues that prison rules did not require him, as the district court ruled, to state his retaliation claim with factual particularity. But even if we assume that he adequately raised his claim at his due process hearing, he did not follow the required grievance procedures to appeal the warden's decision. The Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), provides that "[n]o action shall be brought with respect to prison conditions ... by a prisoner ... until such administrative remedies as are available are exhausted." The statute requires prisoners to pursue complaints through "all levels of the relevant administrative-review system," *Chambers v. Sood*, 956 F.3d 979, 981 (7th Cir. 2020), and "in the place, and at the time" required by the prison's rules, *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002). Because Cannon is a Wisconsin prisoner, we apply Wisconsin's administrative rules, *see Schillinger v. Kiley*, 954 F.3d 990, 995 (7th Cir. 2020), which required Cannon to timely appeal the warden's decision through all levels of the prison's complaint system, *see WIS. ADMIN. CODE DOC §§ 303.82(4), 310.05, 310.06(2)*. The defendants have provided an authenticated copy of Cannon's complaint history establishing that he did not do so.

Cannon insists otherwise, pointing to the two grievances he filed after receiving the warden's decision and the documents he apparently provided to the defendants through other channels. But these grievances did not "clearly identif[y]" his retaliation claim as the one issue of concern, as the regulations required. *Id.* § 310.07(5). Further, he offers nothing to show that he sufficiently exhausted his options for appealing those grievances. *See id.* §§ 310.09(1), 310.10(10), 310.12(1). And the documents he provided through other channels were outside the required procedures. *See Pozo*, 286 F.3d at 1025.

AFFIRMED