[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14893
Non-Argument Calendar

D.C. Docket No. 3:14-cv-01319-MMH-MCR

TROY R. JACKSON,

Plaintiff - Appellant,

versus

OFFICER GRIFFIN,
Individual Capacity,
SGT. SEAN JOHNSON,
a.k.a. Rocksteady,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(February 26, 2019)

Before MARTIN, JILL PRYOR, and ANDERSON, Circuit Judges.

PER CURIAM:

Troy Jackson, proceeding pro se, appeals the district court's dismissal of his 42 U.S.C. § 1983 lawsuit challenging his treatment in prison for failure to exhaust administrative remedies. After careful consideration, we reverse and remand.

I.

Before an incarcerated person can challenge the conditions of his confinement under 42 U.S.C. § 1983, he must exhaust all available administrative remedies. 42 U.S.C. § 1997e(a); Jones v. Bock, 549 U.S. 199, 204, 218, 127 S. Ct. 910, 915, 923 (2007). An incarcerated person need not exhaust any remedies that are unavailable to him. Ross v. Blake, 578 U.S. __, 136 S. Ct. 1580, 1862 (2016). For a remedy to be available, it "must be capable of use for the accomplishment of its purpose." Turner v. Burnside, 541 F.3d 1077, 1084 (11th Cir. 2008) (quotation marks omitted).

When evaluating a motion to dismiss for failure to exhaust, district courts must follow a two-step process. Id. at 1082–83. First, the district court must "look[] to the factual allegations in the defendant's motion to dismiss and those in the plaintiff's response, and if they conflict, take[] the plaintiff's version of the facts as true." Id. at 1082. "If, in that light, the defendant is entitled to have the complaint dismissed for failure to exhaust administrative remedies, it must be dismissed." Id. However, "[i]f the complaint is not subject to dismissal at the first step . . . the court then proceeds to make specific findings in order to resolve the

disputed factual issues related to exhaustion." Id. And "[o]nce the court makes findings on the disputed issues of fact, it then decides whether under those findings the prisoner has exhausted his available administrative remedies." Id. at 1083.

We review de novo dismissals for failure to exhaust available administrative remedies. Bingham v. Thomas, 654 F.3d 1171, 1174 (11th Cir. 2011) (per curiam). We hold pro se filings to a less stringent standard than counseled filings and construe them liberally. Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998) (per curiam).

II.

The district court granted the defendants' motion to dismiss at Turner's first step. That ruling was in error.

To exhaust his administrative remedies, Jackson was required to appeal the denial of his formal grievance within fifteen days of the date he received notice that the formal grievance was denied. See Fla. Admin. Code § 33-103.007(1) (April 20, 2014) (providing that the third and final step of the administrative review process involves filing an appeal with the Office of the Secretary of the Florida Department of Corrections); id. § 103.011(1)(c) (providing that such appeals "must be received within 15 calendar days from the date the response to the formal grievance is returned to the inmate"). Jackson alleged he received

notice on May 7, 2014. And he alleged he submitted an appeal on either May 21 or 22, 2014—that is, within fifteen days of the date he received notice.

But the district court found that Jackson did not dispute that he submitted an untimely appeal. The court ruled the appeal was filed on the date that prison officials noted Jackson's appeal as *received*, instead of the date Jackson *submitted* it. See Fla. Admin. Code § 103.007(3)(a) (April 20, 2014) (providing that, to determine the timeliness of an appeal, a prison official compares the receipt date on the appeal form with the return date on the formal grievance). A prison official dated Jackson's appeal as received on May 27, 2014, thus making it untimely if the official's dating was controlling.

However, there is a dispute of fact, so the district court erred in resolving this case at Turner's first step. Jackson's allegations and arguments, liberally construed, suggest that his appeal was marked as received on May 27 because prison officials failed to comply with procedural rules for collecting and logging grievances. Florida law requires that a prison official collect and log grievances Monday through Friday. See Fla. Admin. Code § 33-103.006(2)(h) (April 20, 2014) (providing that "[g]rievances and appeals shall be picked up and forwarded by the institutions daily Monday through Friday"); id. § (8)(c) (providing that "the staff person designated to accept the grievance . . . shall . . . [c]omplete the receipt portion of [the appeal form] being forwarded to central office by entering a

log/tracking number and date of receipt and sign as the recipient"). Jackson alleges that he put the grievance in the designated collection box on Wednesday, May 21 or Thursday, May 22, 2014. Taking Jackson's allegations as true, the grievance process was unavailable to him. See, e.g., Bryant v. Rich, 530 F.3d 1368, 1373 (11th Cir. 2008) (holding that denying access to grievance forms can make an administrative remedy unavailable). Had the required collection and logging procedures been followed, Jackson's appeal would have been logged as submitted and received on May 21 or May 22, 2014 and would thus have been timely.

As a result, the district court erred when it found that Jackson did not allege the grievance process was unavailable and in ruling that Jackson's complaint was subject to dismissal at the first step of the Turner analysis. See Turner, 541 F.3d at 1082 (citing Bryant, 530 F.3d at 1373–74, and suggesting that disputes about the availability of administrative remedies are questions of fact that can bar dismissal at Turner's first step). On remand, the district court should proceed to the second step of the Turner analysis.

REVERSED AND REMANDED.