

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12704
Non-Argument Calendar

D.C. Docket No. 2:16-cv-00221-RWS

KENNETH JOSEPH DAVIS,

Plaintiff-Appellant,

versus

PATRICK HOLTZCLAW,
STEPHEN MANDERSON,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(June 27, 2019)

Before ED CARNES, Chief Judge, MARTIN, and NEWSOM, Circuit Judges.

PER CURIAM:

Kenneth Joseph Davis is a state prisoner formerly imprisoned at the Lumpkin County Detention Center. He seeks relief under 42 U.S.C. § 1983 alleging that two Detention Center officers, Patrick Holtzclaw and Stephen Manderson, delayed his access to medical treatment in violation of his Eighth Amendment rights.

I.

On April 19, 2016 Holtzclaw and Anderson moved Davis to an isolation cell where he was to remain on twenty-three-hour lockdown until a hearing could be held on a disciplinary charge related to Davis' unauthorized presence outside his previous cell. On April 20 Davis punched the steel door of his isolation cell, injuring his right hand. That day he filed a grievance using the detention center's administrative procedures, alleging that Anderson and Holtzclaw had refused to let him fill out a medical request and that Holtzclaw said he was "gunning" for Davis because he was trying to turn other inmates against Holtzclaw. Davis received no medical attention until the morning of April 21, when he was transferred to a medical isolation cell so that he could receive medical attention upon the nurse's arrival. Later that day Staff Sergeant Bradford Farris issued Davis a written response to his grievance that simply stated the time and date that Davis had been transferred to a medical cell. Davis could have appealed that response under Detention Center rules, but he did not do so.

Davis then filed this action seeking monetary relief from the defendants. He claims that their deliberate indifference to his severe pain violated his Eighth Amendment rights. The magistrate judge issued a Report and Recommendation recommending that the district court grant the defendants' motion for summary judgment, reasoning that Davis had failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act. The magistrate judge also concluded that if the district court did not dismiss the case because of Davis' unexhausted claims, the defendants should be granted summary judgment because Davis had not produced any medical evidence "to establish the detrimental effect of the 24-hour delay in medical treatment." The district court adopted the portions of the report concluding that Davis had failed to exhaust his administrative remedies and dismissed the action.¹ But it declined to adopt the report's finding that there was no genuine issue of material fact regarding the merits of Davis' deliberate indifference claim because "untreated pain, if severe, is sufficient to

¹ We have noted that "[b]ecause exhaustion of administrative remedies is a matter in abatement and not generally an adjudication on the merits . . . it should be raised in a motion to dismiss, or be treated as such if raised in a motion for summary judgment." Bryant v. Rich, 530 F.3d 1368, 1374–75 (11th Cir. 2008) (quotation marks omitted). But we have also said that under these circumstances "it is proper for a judge to consider facts outside of the pleadings and to resolve factual disputes so long as the factual disputes do not decide the merits and the parties have sufficient opportunity to develop a record." Id. at 1376. Here the parties do not dispute that Davis failed to exhaust his administrative remedies, and they agree that whether the PLRA bars Davis' federal suit turns on purely legal questions.

sustain a § 1983 medical deliberate indifference claim.” Davis now appeals, contending that he was not required to file additional administrative appeals.

II.

We review de novo a district court’s order dismissing a prisoner’s claim for failure to exhaust administrative remedies under the Prison Litigation Reform Act. See Brown v. Sikes, 212 F.3d 1205, 1207 (11th Cir. 2000). The Act provides that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). That exhaustion requirement “applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes.” Porter v. Nussle, 534 U.S. 516, 532, 122 S. Ct. 983, 992 (2002). “This provision entirely eliminates judicial discretion and instead mandates strict exhaustion, irrespective of the forms of relief sought and offered through administrative avenues.” Johnson v. Meadows, 418 F.3d 1152, 1155 (11th Cir. 2005) (quotation marks omitted).

Davis does not dispute that he failed to exhaust his administrative remedies because he could have filed an appeal of the response to his grievance and failed to do so. He argues instead that he was not required to appeal because he was satisfied with the initial response to his grievance. But that is clearly belied by the

filing of this federal suit, and it would not excuse him from the PLRA's exhaustion requirement. So the PLRA bars his § 1983 claims.²

AFFIRMED.

² The defendants filed a cross-appeal arguing that the district court erred in granting their summary judgment motion based on Davis' failure to exhaust administrative remedies instead of granting their motion based on their entitlement to qualified immunity. Another panel of this Court dismissed the cross-appeal for lack of jurisdiction. The defendants then filed a motion for reconsideration of the dismissal of their cross-appeal, which was carried with the case. The defendants contend that prevailing on their cross-appeal would entitle them to additional relief because the effect of the district court's order was to dismiss the complaint without prejudice, while a grant of summary judgment based on qualified immunity would result in a dismissal with prejudice. They rely on our decision in Bryant, which noted that a district court had granted a defendant's motion for summary judgment for failure to exhaust administrative remedies under the PLRA and dismissed the complaint without prejudice. 520 F.3d at 1371 n.2. But, unlike Bryant, here the district court did not state that it was dismissing the complaint without prejudice, and Rule 41(b) stipulates that an involuntary dismissal is an adjudication on the merits unless it is granted "for lack of jurisdiction, improper venue, or failure to join a party." Fed. R. Civ. P 41(b). None of those reasons for dismissal applies in this case. While we have held that failure to exhaust administrative remedies under the PLRA should be "treated like a defense for lack of jurisdiction . . . it is not a jurisdictional matter." Turner v. Burnside, 541 F.3d 1077, 1082 (11th Cir. 2008). So we do not agree with the defendants that "the legal effect of [the district court's] decision is different than had summary judgment been entered on the issue of qualified immunity." Contrary to their argument, the legal effect of the district court's decision is no different than if they had been granted summary judgment on qualified immunity grounds. As a result their motion for reconsideration is **DENIED**, and the district court's judgment is **AFFIRMED** based on Davis' failure to exhaust his administrative remedies.