NONPRECEDENTIAL DISPOSITION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 September 18, 2023*
Decided September 22, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-1616

STESHAWN BRISCO,
Plaintiff-Appellant,

v.

ANTHONY WILLS, Warden of Menard Correctional Center, in his official capacity, et al.,
Defendants-Appellees.

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

No. 3:20-cv-00366-GCS

Gilbert C. Sison,
Magistrate Judge.

O R D E R

Steshawn Brisco, an Illinois prisoner, sued prison officials for violating his Eighth Amendment rights, but the district court ruled after a hearing that he failed to exhaust

* 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).

administrative remedies, and it entered summary judgment against him. Because the court's factual findings on exhaustion are not clearly erroneous, we affirm.

Brisco alleges that in early May 2018, while housed at Menard Correctional Center in Chester, Illinois, he reported that he had suicidal thoughts. An officer responded that Brisco was faking and gave him a staple, which he used to cut himself. Another officer noticed the self-harm, grabbed the staple, but ignored Brisco's request for medical help. The next day, a mental health professional evaluated Brisco and ordered treatment for his wound, but Brisco says he received none.

Brisco took preliminary steps toward grieving this incident. First, he submitted on May 9, 2018, an "emergency" grievance to the warden. A week later the warden returned it to Brisco, explaining that it did not present an emergency and instructing him to resubmit it through the standard three-step grievance procedure. *See* 20 ILL. ADMIN. CODE § 504.800, *et seq*. Under that process, a prisoner must (1) attempt to resolve the problem through a counselor; (2) if dissatisfied, file within 60 days of the incident a formal grievance with a grievance officer, who then recommends a decision to the warden; (3) if still dissatisfied, appeal within 30 days to the Director of the Illinois Department of Corrections through the Administrative Review Board. 20 ILL. ADMIN. CODE §§ 504.810(a), 504.850(a), (d)–(e). Brisco wrote (in a letter to the Board mailed a year later) that after he learned in May that his grievance was not an emergency, he sent it to his counselor, received no written response, and then filed two standard grievances within 60 days of the incident (in May and June) that went unanswered. The Board responded that Brisco's letter was "[m]isdirected" to it. More than a year after the incident, Brisco submitted a standard grievance about the events. His counselor denied the grievance as untimely because more than 60 days had passed since the incident.

Brisco sued the warden and others under 42 U.S.C. § 1983, accusing them of encouraging self-harm and denying him needed care in May 2018. The defendants moved for summary judgment, and the parties disputed whether Brisco exhausted his administrative remedies. *See* 42 U.S.C. § 1997e(a). To resolve this dispute, a magistrate judge held an evidentiary hearing under *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008).[1] The defendants testified that, based on a search of their records, Brisco did not submit through the standard grievance process his "emergency" grievance, as the warden had directed. Nor did Brisco file any fresh grievances within 60 days of the May incident. Brisco countered that he redirected his mislabeled "emergency" grievance to his counselor and filed two more grievances within 60 days of the incident, but that his

[1] The magistrate judge acted with the consent of the parties pursuant to 28 U.S.C. § 636(c).

counselor said that she or others destroyed them. (The counselor denied that she or other staff destroyed grievances.) Brisco also offered testimony from two fellow prisoners who had submitted affidavits. The first, his cellmate, testified that he saw Brisco file a grievance in June 2018 and that staff destroyed grievances. But among other contradictions, he testified that Brisco both did, and did not, help him write his affidavit and that he saw Brisco write only one, and more than one, grievance about the incident. Brisco says that another prisoner would have also testified that staff destroyed grievances, but the court ruled that this proposed testimony would be cumulative and did not allow it.

The judge granted the defendants' motions for summary judgment. He credited the evidence from the defendants that, based on the search of their records, they had received no grievances from Brisco within 60 days of the incident and did not destroy grievances. The judge discredited the contrary testimony from Brisco and his cellmate because their affidavits bore suspiciously similar handwriting (implying that the testimony was concocted) and the cellmate's testimony was internally inconsistent.

On appeal, Brisco maintains that he exhausted his administrative remedies. *See* 42 U.S.C § 1997e(a). He does not dispute that he must exhaust all available administrative remedies before he sues. To do so, he must comply strictly with his prison's rules for filing grievances and appeals. *See Jones v. Bock*, 549 U.S. 199, 204 (2007); *Lockett v. Bonson*, 937 F.3d 1016, 1025 (7th Cir. 2019). During a *Pavey* hearing, the judge resolves disputed factual questions, *see Pavey v. Conley*, 544 F.3d at 742, and we review for clear error the magistrate judge's factual findings that underlie the ruling that Brisco did not exhaust available remedies. *Wilborn v. Ealey*, 881 F.3d 998, 1004 (7th Cir. 2018).

The judge did not clearly err in finding that Brisco failed to exhaust. Brisco concedes that he learned in May that his grievance was not an emergency. Under the grievance rules, Brisco had to use the standard grievance process. *See* 20 ILL. ADMIN. CODE § 504.840(c). But the record contains ample evidence—testimony from the defendants upon their review of the prison's grievance records—that Brisco did not: He did not submit to his counselor the non-emergency grievance, as the warden had instructed, nor did he file any other grievances within 60 days of the incident. True, Brisco testified that he forwarded the non-emergency grievance to his counselor. But apart from the fatal problem that the magistrate judge's contrary finding (based on the defendants' evidence) was not clearly erroneous, the record contains no documentation that Brisco followed up with the other two required steps—a timely grievance to a grievance officer and a timely appeal to the Director. Finally, the magistrate judge reasonably ruled that Brisco's grievance filed more than a year after the incident did not

comply with the 60-day deadline. Thus, Brisco did not exhaust. *See Woodford v. Ngo*, 548 U.S. 81, 102 (2006).

Brisco responds that prison staff tore up his grievances and therefore he properly exhausted. But the magistrate judge's rationale for discrediting this response was not clearly erroneous. To begin, a judge's credibility assessment will rarely be overturned on appeal. *See Ortiz v. Martinez*, 789 F.3d 722, 729 (7th Cir. 2015). And this is not one of those rare cases, because the magistrate judge had adequate reasons to discredit Brisco's story. Brisco's testimony tracked the affidavits of his two fellow prisoners, and the magistrate judge reasonably found those affidavits were suspicious because they appeared to be written by the same person and therefore did not seem genuine. Furthermore, Brisco's cellmate's testimony—that Brisco filed a timely grievance and that staff destroyed grievances—had several discrediting inconsistencies that Brisco does not on appeal even try to reconcile.

Finally, Brisco argues that the judge should have allowed the other fellow prisoner to testify. A court has broad discretion to exclude needlessly cumulative testimony. *See* FED. R. EVID. 403; *see also Thompson v. City of Chicago*, 722 F.3d 963, 971 (7th Cir. 2013). The judge reasonably exercised that discretion because the affiant's proposed testimony repeated matters that others had already testified to (the alleged destruction of grievances) and that the court had adequately rejected: First, the defendants' witnesses had sufficiently contradicted the testimony alleging destruction. Second, the proposed testimony tracked the suspicious, similar-looking affidavit from Brisco's cellmate. Finally, the story about destroyed grievances, when recounted by the cellmate, contained numerous inconsistencies. Thus, the judge reasonably declined to hear this proposed testimony.

AFFIRMED