

**NONPRECEDENTIAL DISPOSITION**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 March 9, 2023\*

Decided March 9, 2023

**Before**

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-1792

FRENCH MASON,  
*Plaintiff-Appellant,*

*v.*

ZACK BULLOCK, et al.,  
*Defendants-Appellees.*

Appeal from the United States District  
Court for the Northern District of Indiana,  
South Bend Division.

No. 3:21-CV-20-JD-MGG

Jon E. DeGuilio,  
*Chief Judge.*

**ORDER**

French Mason, who also calls himself French Chester Mason-Bey, was hospitalized after having a seizure and being shocked with a stun gun and pepper-

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\* 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).

sprayed by prison guards. He sued them under 42 U.S.C. § 1983 for violating his rights under the Eighth Amendment, but the district court ruled that he failed to exhaust his administrative remedies and therefore entered summary judgment for the guards. He contends on appeal that he exhausted his administrative remedies to the extent they were available during the relevant ten days. We affirm.

We construe the facts in the light most favorable to Mason. *See Perry v. Sims*, 990 F.3d 505, 511 (7th Cir. 2021). Mason, who was then incarcerated at Miami Correctional Facility in Bunker Hill, Indiana, had a seizure on March 28, 2020. Prison guards, who would later report that they had observed him behaving violently, pepper-sprayed and used a stun gun on him. Mason was eventually transported to the emergency room, and he remained at the hospital until he was discharged to the prison infirmary on April 4, 2020. He was then in quarantine there for two weeks, until April 18, 2020.

Under the policy of the Indiana Department of Correction, Mason had ten business days from the date of the incident—until April 10, 2020—to submit a grievance. *See Offender Grievance Process, Ind. Dep’t of Corr. Pol’y & Admin. Procedures 00-02-301, § X* (effective Apr. 1, 2020). The policy also provides that, if extenuating circumstances delay the timely submission of a grievance form, an inmate “must document and submit the reason for the delay on a separate piece of paper with signature and date, and include with the appropriate appeal form or make a request for the specific form to the Offender Grievance Specialist for review.” *Id.* at § XIII. The grievance policy was revised around the time of Mason’s incident, but the rules about timely submitting grievances and requesting extensions remained unchanged from the prior version. *See Offender Grievance Process, Ind. Dep’t of Corr. Pol’y & Admin. Procedures 00-02-301, § XIV* (effective Oct. 1, 2017); Ind. Code § 11-11-1-1. A grievance specialist who submitted a declaration supporting the guards’ summary judgment motion attested that grievance forms were available in the infirmary.

On April 30, 2020, a different grievance specialist received two grievances from Mason, dated April 20 and April 21, 2020. The officer denied those grievances as untimely and returned them to Mason, who appealed. On each form, he wrote that a staff member had told him he should receive an extension of time. He did not sign or date these notes. He filed a third grievance about the incident on April 28, 2020, in which he again noted that he was informed he should be able to get an extension. This grievance was returned with the response that the staff member Mason had spoken with did “not dictate the Grievance Process” and that the grievance was late.

Mason then sued the guards who had injured him for excessive force, and other officials for allegedly authorizing, failing to prevent, or hiding the use of excessive

force. At screening under 28 U.S.C. § 1915A, the district court allowed Mason to proceed against only the eight guards involved in the incident on March 28, 2020.

These defendants moved for summary judgment on the ground that Mason did not exhaust his administrative remedies before filing suit. *See* 42 U.S.C. § 1997e(a). Mason conceded that he did not submit a grievance about the March 28 incident within ten days but stated that he could not have done so because of his eight-day hospitalization and subsequent quarantine in the prison infirmary. He also declared that he repeatedly asked for, but did not receive, grievance forms in the infirmary and could not access the new grievance policy because the law library was closed. (He admitted, however, that he had been aware of the prior policy—with identical timing provisions—since he arrived at the facility in 2018.) Moreover, he noted that the grievance specialist never told him that he had to request an extension of time on a dated and signed piece of paper separate from a grievance form. He believed his notes on the forms were requests for extensions of time.

The district court entered summary judgment for the defendants. The court agreed that Mason did not submit a timely grievance about defendants' use of force. And, although he had the means to do so, he did not properly request an extension of time: the notes he wrote on his return-of-grievance forms and the explanation in his April 28 grievance were procedurally defective ways to seek an extension.

On appeal, Mason argues that the grievance process was not “available” to him, *see* 42 U.S.C. § 1997e(a), because he was refused a copy of the grievance policy, he could not access a copy in the law library, and staff members ignored his timely requests for grievance forms. He also asserts, for the first time, that he exhausted his administrative remedies because he requested a time extension on a separate, signed and dated, sheet of paper as required and received no response. Finally, he argues that he was entitled to an evidentiary hearing under *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008).

Our review of the summary judgment ruling is *de novo*, *see Perry*, 990 F.3d at 511. To exhaust administrative remedies, an inmate 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). Mason did not comply with the timing requirements nor the procedure for requesting an extension of time, so his grievances and notes were not effective to exhaust his administrative remedies. *See Woodford v. Ngo*, 548 U.S. 81, 102 (2006).

Mason also fails to demonstrate that the grievance process was not available to him. *See Wallace v. Baldwin*, 55 F.4th 535, 542–43 (7th Cir. 2022). The requirements for

timely filing grievances and requesting extensions of time did not change between 2018, when Mason admits that he became aware of the grievance policies, and his March 2020 incident. Mason had the option to request a time-limit extension when he submitted his first two late grievances. But he did not say anything about his lateness then. After those grievances were deemed untimely, he used notes on the forms to say that he was promised an extension, but he still did not submit the separate signed-and-dated request to be excused from the 10-day time limit.

Moreover, Mason forfeited his argument that he submitted a proper request for an extension because he raises it for the first time on appeal. *Scheidler v. Indiana*, 914 F.3d 535, 540 (7th Cir. 2019). No evidence in the summary judgment record supports his contention, and we cannot consider the new evidence he submits on appeal. *Henderson v. Wilkie*, 966 F.3d 530, 539 (7th Cir. 2020).

Finally, because the parties' written submissions did not suggest any fact dispute, the district court was not required to hold a *Pavey* hearing. *See Wagoner v. Lemmon*, 778 F.3d 586, 588 (7th Cir. 2015).

AFFIRMED