No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER VARNER,

Petitioner,

V.

STAN SHEPARD, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPENDIX

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United States Court of Appeals, Eleventh Circuit.

Christopher VARNER, Plaintiff–Appellant,
v.
Stan SHEPARD, Jerry Beard, Antonio Binns, Justin Washington, Lenon Butler, Rodgerick Nabors, Julian Greenaway, Defendants–Appellees.

No. 19-12048
|
(August 31, 2021)

Synopsis

Background: State prisoner brought § 1983 action against state prison officials and guards, alleging that guards used excessive force against him, causing him severe injuries. The United States District Court for the Southern District of Georgia, No. 1:17-cv-00089-JRH-BKE, J. Randal Hall, Chief Judge, 2018 WL 5283448, dismissed the action. Prisoner appealed.

Holdings: The Court of Appeals, Lagoa, Circuit Judge, held that:

grievance procedure for excessive force complaints did not render administrative remedies unavailable, so as to excuse prisoner's failure to comply with Prison Litigation Reform Act's (PLRA) administrative exhaustion requirement;

prisoner's mental health conditions did not render grievance procedure unavailable, so as to excuse failure to meet PLRA's administrative exhaustion requirement; and

neither prisoner's family's informal complaints nor prisoner's own untimely grievances were sufficient to comply with grievance procedure, in order to meet PLRA's administrative exhaustion prerequisite.

Affirmed.

Jill A. Pryor, Circuit Judge, filed opinion, concurring in part, and dissenting in part.

***1254** Appeal from the United States District Court for the Southern District of Georgia, D.C. Docket No. 1:17-cv-00089-JRH-BKE

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Before WILSON, JILL PRYOR, and LAGOA, Circuit Judges.

Opinion

LAGOA, Circuit Judge:

***1255** Christopher Varner appeals the district court's order dismissing with prejudice his 42 U.S.C. § 1983 claims against the Georgia Department of Corrections ("GDC") and Augusta State Medical Prison ("ASMP") officials (collectively, "Defendants"). The district court found that Varner did not properly exhaust the available administrative remedies as required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e. On appeal, Varner argues that there were no available administrative remedies, or, alternatively, that the remedies were exhausted. For the reasons set forth below, we affirm.[1]

[1] Varner also requested that if this Court did not reverse, his case be remanded for further discovery. Because additional discovery would not relate to facts relevant to our decision, we deny that request.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. GDC Grievance Procedure

Relevant here is GDC's 2012 grievance policy. Upon entering GDC, inmates receive a copy of this policy in their Orientation Handbook and an oral explanation of the policy. The policy allows inmates to assist each other in filling out grievances, and notes that "[i]nstitutional staff will assist offenders who need special help filling out the grievance forms (i.e., due to language barriers, illiteracy, or physical or mental disability) upon request." GDC "encourages," but does not require, "offenders to try to resolve complaints on an informal basis before filing a grievance." It is clear from the Handbook, however, that a formal grievance must be filed in order to initiate GDC's administrative process.

The GDC policy generally consists of a two-step procedure for submitting a grievance. For the first step, the inmate must file a grievance form within ten days of when he knew or should have known of the incident.[2] A grievance coordinator screens the form for procedural compliance, including timeliness. If the grievance coordinator finds that the grievance is procedurally flawed, and the warden agrees, the grievance is rejected. If the grievance coordinator finds that the grievance is procedurally compliant (or if the warden disagrees with the grievance coordinator's recommendation to reject the grievance for procedural flaws), then the grievance is processed, investigated, and decided on the merits. For the second step, the inmate can file a central office appeal after receiving a response to his grievance (either a procedural rejection or a decision on the merits).

[2] This deadline may be waived by GDC for "good cause." Good cause is defined as "[a] legitimate reason involving circumstances that prevented the offender from timely filing a grievance or an appeal. Examples include: serious illness, being housed away from a facility covered by this procedure (such as being out on a court production order or for medical treatment)."

Grievances reporting physical force that does not comply with GDC's use-of-force procedures—like all grievances—are subject to the ten-day filing deadline, as well as the good cause exception. These types of grievances, however, are not subject to the remainder of the two-step procedure. Instead, such grievances are "automatically forwarded" to the Internal Investigations Unit ("IIU"), and "such actions automatically end the grievance process." "Once a grievance is referred to the Internal Investigations Unit ... then this is the final action that will be taken on the grievance and terminates the grievance procedure." The inmate receives notice that his grievance was forwarded to the IIU and terminated, although Varner alleges that inmates did not receive notice of the outcome of the IIU investigation. Inmates ***1256** may not appeal the decision to refer a grievance to the IIU. Notably, any subsequent investigation or action taken by the IIU is not part of the grievance procedure.

B. Varner's Claims[3]

[3] Our description of the incident comes from the allegations in Varner's amended complaint. Our description of the post-incident events comes from the Defendants' motion to dismiss and the documents filed by the parties relating to the Defendants' failure to exhaust administrative remedies defense.

In his amended complaint, Varner alleges that he was housed at ASMP between 2012 and February 2014 due to his schizophrenia, organic brain damage, severe diabetes, and bipolar disorder. On February 13, 2014, while Varner was standing in the medication line in a hallway, several officers entered the hallway and shouted epithets at the inmates. When Varner verbally responded to the officers, Sergeant John Williams[4] grabbed Varner and attempted to handcuff him. Varner struck Sergeant Williams in the head, and the officers responded by bringing Varner into a small vestibule and placing him in a chokehold until he lost consciousness. When Varner regained consciousness, he was handcuffed and bleeding in the vestibule while the officers stood around him. Officers punched, kicked, and stomped on Varner while he was handcuffed and lying on the floor. The officers next brought Varner to the medical unit building and entered an elevator. They rode up and down the elevator four times, with the officers continuing to use force against Varner, including the use of pepper spray and a metal baton, despite Varner being handcuffed and compliant. Finally, the officers took Varner to ASMP's medical unit, where they continued their attacks, even though a nurse pleaded with them to stop. Varner was transferred to a civilian hospital for treatment of a broken eye socket, jaw, and nose, and extensive bruising on his face and torso. Varner continues to suffer from pain in his jaw and feet, frequent headaches, and exacerbation of his preexisting mental illnesses.

[4] Sergeant Williams is not a defendant in this case.

On the same day of the incident, the warden referred it to the IIU. Also on the same day as the incident, Varner's father lodged a complaint with ASMP, and Varner's mother did the same shortly thereafter. After reviewing a partial video recording of the incident and interviewing the three officers, the IIU determined that the officers had used excessive force. As a result of the IIU investigation, two of the Defendants in this case, Officer Antonio Binns and Officer Justin Washington, as well as Sergeant Williams, resigned in lieu of termination. Several years later, all three officers pleaded guilty to federal criminal charges related to the assault and were sentenced to five years' probation, a $2000 fine, and a $100 special assessment. *United States v. Williams*, No. 1:16-CR-00024 (S.D. Ga. Apr. 12, 2017).

About one month after the incident, on March 12, 2014, Varner filed two grievances. Both of these grievances were related to Varner's diabetes and not the excessive force incident, and both were rejected on procedural grounds.

Varner later filed three grievances related to the excessive force incident—on July 24, 2015, June 24, 2016, and June 21, 2017. These grievances were all rejected as untimely. Varner appealed the rejection of his 2016 grievance, but the appeals investigator rejected the grievance as untimely. Varner did not appeal the rejection of the other two grievances. None of these grievances were categorized as reporting excessive use of force, the type of grievance that would be automatically forwarded to the ***1257** IIU. In support of their motion to dismiss for failure to exhaust, however, Defendants submitted an affidavit from a prison official, who explains that all grievances, regardless of their categorization, are screened for procedural compliance. Additionally, the same filing deadline under the GDC policy applies to grievances asserting a compliant use of force and grievances asserting an excessive use of force.

On August 30, 2017, Varner and two other ASMP inmates filed an amended complaint in federal district court. The Defendants moved to dismiss. Relevant here, the defendants argued that Varner's claims were barred by the PLRA because he did not exhaust his administrative remedies. In connection with this exhaustion argument, the Defendants and Varner submitted documents, including affidavits, relating to the incident and Varner's grievances.

The district court granted the motion to dismiss as to Varner. Applying this Court's two-step procedure for analyzing exhaustion, *see Turner v. Burnside*, 541 F.3d 1077, 1082 (11th Cir. 2008), the district court first considered whether, taking Varner's allegations as true, Varner's claims should be dismissed. Because Varner alleged that administrative remedies were not available, and thus the exhaustion requirement would not apply, the district court did not dismiss at the first step of its analysis. At the second step, the district court made factual findings in order to resolve the parties' factual disputes regarding

exhaustion of administrative remedies. The court determined that: (1) administrative remedies were available to Varner; (2) the IIU investigation did not excuse Varner's exhaustion obligation; and (3) Varner's untimely grievances did not satisfy the exhaustion requirement. The district court therefore dismissed Varner's claims with prejudice. Because Varner's co-plaintiffs' claims were not affected by the dismissal of Varner's claims, the district court certified a final judgment against Varner pursuant to Federal Rule of Civil Procedure 54(b). This appeal ensued.

II. STANDARD OF REVIEW

"We review *de novo* the interpretation and application of 42 U.S.C. § 1997e(a)'s exhaustion requirement." *Whatley v. Warden ("Whatley I")*, 802 F.3d 1205, 1209 (11th Cir. 2015) (quoting *Johnson v. Meadows*, 418 F.3d 1152, 1155 (11th Cir. 2005)). The district court's factual findings relating to the exhaustion requirement are reviewed for clear error. *Id.* Otherwise, "we accept as true the facts as set forth in the complaint and draw all reasonable inferences in [the plaintiff's] favor." *Id.* (quoting *Randall v. Scott*, 610 F.3d 701, 705 (11th Cir. 2010)).

III. ANALYSIS

Under the PLRA, "[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). Thus, "when a state provides a grievance procedure for its prisoners, as Georgia does here, an inmate alleging harm suffered from prison conditions must file a grievance and exhaust the remedies available under that procedure before pursuing a § 1983 lawsuit." *Johnson*, 418 F.3d at 1156 (quoting *Brown v. Sikes*, 212 F.3d 1205, 1207 (11th Cir. 2000)).

"[F]ailure to exhaust is an affirmative defense under the PLRA." *Jones v. Bock*, 549 U.S. 199, 216, 127 S.Ct. 910, 166 L.Ed.2d 798 (2007). There is a "two-step process" for analyzing exhaustion at the motion to dismiss stage. ***1258** *Turner*, 541 F.3d at 1082. A district court must first determine whether the complaint should be dismissed for lack of exhaustion "tak[ing] the plaintiff's version of the facts as true." *Id.* Second, if the complaint is not dismissed at the first step, the district court must "make specific findings in order to resolve the disputed factual issues related to exhaustion," bearing in mind that defendants have the burden of proof, and "decide[ ] whether under those findings the prisoner has exhausted his available administrative remedies." *Id.* at 1082–83. Varner's claims were dismissed at the second step.

Although Varner did not submit a timely grievance in accordance with GDC policy, he makes two arguments as to why his claims should not have been dismissed. First, he argues that there were no available administrative remedies under the GDC policy. In the alternative, he argues that in fact the remedies were exhausted. We address these arguments in turn.

A. Availability

In *Ross v. Blake*, 578 U.S. 632, 136 S. Ct. 1850, 1856–57, 195 L.Ed.2d 117 (2016), the Supreme Court held that § 1997e(a)'s exhaustion requirement is "mandatory" and that courts therefore "may not excuse a failure to exhaust" due to "special circumstances." There is an exception to the exhaustion requirement, however, that is "baked into" § 1997e(a)'s text: "[a]n inmate need exhaust only such administrative remedies as are 'available.' " *Id.* at 1862. "Accordingly, an inmate is required to exhaust those, but only those, grievance procedures that are 'capable of use' to obtain 'some relief for the action complained of.' " *Id.* at 1859 (quoting *Booth v. Churner*, 532 U.S. 731, 738, 121 S.Ct. 1819, 149 L.Ed.2d 958 (2001)). The Court "note[d] as relevant here three kinds of circumstances in which an administrative remedy, although officially on the books, is not capable of use to obtain relief": (1) when the procedure "operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates"; (2) when the administrative scheme is "so opaque that it becomes, practically speaking, incapable of use"; and (3) "when prison administrators thwart inmates from taking advantage of a grievance process though machination, misrepresentation, or intimidation." *Id.* at 1859–60.

Varner argues that an administrative remedy was not available for three reasons: (1) the GDC's grievance procedure for excessive force complaints operates as a "dead end"; (2) the IIU process is not capable of being exhausted; and (3) Varner's mental illness rendered the grievance procedure unavailable to him. We address each argument in turn.

Varner first argues that the GDC grievance procedure for excessive force complaints operates as a dead end because the complaints are automatically terminated and forwarded to the IIU. In order to be "available," an administrative procedure must offer "the possibility of some relief for the action complained of." *Booth*, 532 U.S. at 738, 121 S.Ct. 1819. "Without the possibility of some relief, the administrative officers would presumably have no authority to act on the subject of the complaint, leaving the inmate with nothing to exhaust." *Id.* at 736 n.4, 121 S.Ct. 1819. Where there is the possibility of some relief, however, a prisoner must "exhaust the grievance procedures offered, whether or not the possible responses cover the specific relief the prisoner demands." *Id.* at 738, 121 S.Ct. 1819. The PLRA "mandates strict exhaustion, 'irrespective of the forms of relief sought and offered through administrative avenues.' " *Johnson*, 418 F.3d at 1155 (quoting *Booth*, 532 U.S. at 741 n.6, 121 S.Ct. 1819). In short, "inmates must exhaust administrative remedies so long as there is the possibility ***1259** of at least some kind of relief." *Id.* at 1156 (quoting *Ross v. County of Bernalillo*, 365 F.3d 1181, 1187 (10th Cir. 2004)).

Here, the GDC policy does offer "the possibility of some relief" in the form of forwarding the excessive force complaint to the IIU. *See Booth*, 532 U.S. at 736 n.4, 121 S.Ct. 1819. Although this relief is limited, investigation of the complaint by the IIU may result in further relief. Here, for example, the IIU investigation led to the resignations and criminal convictions of several officers. Furthermore, once a grievance alleging excessive force is referred to the IIU, the grievance process automatically terminates, fulfilling the inmate's exhaustion requirement for purposes of the PLRA.

Moreover, the automatic nature of the procedure does not render it a dead end. Although prison officials have no discretion in dealing with procedurally compliant grievances regarding excessive force—they must forward the complaint to the IIU and terminate the grievance—they do not "lack[ ] authority to provide any relief or to take any action whatsoever in response to a complaint." *See id.* at 736, 121 S.Ct. 1819. Rather, GDC officials *must* take action on every such excessive force grievance by forwarding it to the IIU. Therefore, when properly submitted and handled in accordance with GDC policy, all excessive force grievances result in some relief, even if not the relief requested by the inmate.

Although the GDC procedure bears some similarities to a Maryland procedure that troubled the Supreme Court in *Ross*, we note two key distinctions. In *Ross*, the plaintiff failed to use Maryland's standard grievance process to make an excessive force claim, but did report the assault to a senior corrections officer, who referred the incident to the state's IIU. 136 S. Ct. at 1855. The plaintiff argued that his failure to exhaust the standard grievance procedure should have been excused because "wardens routinely dismiss [standard] grievances as procedurally improper when parallel IIU investigations are pending." *Id.* at 1860–61. Evidence "suggest[ed] that some wardens use a rubber stamp specifically devised" to dismiss complaints when an IIU investigation was already in progress. *Id.* at 1861. The Supreme Court remanded the case, asking, among other questions, whether "Maryland's standard grievance procedures potentially offer[ed] relief to [the plaintiff] or, alternatively, did the IIU investigation into his assault foreclose that possibility?" *Id.* at 1862.

We first note that in *Ross*, evidence suggested a grievance would be dismissed routinely where an IIU investigation was already in progress. If there were no such IIU investigation, the same grievance could proceed. Thus, the Supreme Court remanded to determine whether the existence of an IIU investigation "foreclose[d]" the possibility of otherwise available relief. *Id.* Here, every procedurally compliant excessive force grievance is referred to the IIU before being terminated, regardless of whether an IIU investigation is already pending. Thus, unlike *Ross*, GDC grievances are not dismissed for the sole reason that a separate IIU investigation is already in progress. Second, in *Ross*, grievances were "[d]ismissed for procedural reasons" when an IIU investigation was pending. *Id.* at 1861. This could bar the inmate from bringing a civil suit because "the PLRA's exhaustion requirement ... contain[s] a procedural default component." *Johnson*, 418 F.3d at 1159. In contrast, the submission, referral, and automatic termination of a procedurally compliant excessive force grievance under the GDC procedure fully satisfies the PLRA's exhaustion requirement. We therefore conclude that GDC's grievance policy is distinct from the policy at issue in *Ross* and is not a "dead end."

***1260** Varner's second argument fails for similar reasons. Varner argues that it was not possible to exhaust GDC's grievance procedures because inmates were not notified of the results of IIU investigations. But as explained above, inmates need not wait for the IIU investigation to conclude before filing a civil suit. Rather, under the GDC procedure, an inmate exhausts his administrative remedies once he properly submits a grievance alleging excessive force because that act automatically ends the grievance process. Referral to the IIU is itself the relief offered by GDC policy and terminates the grievance process. An inmate therefore has exhausted his administrative remedies as soon as his claim is referred to the IIU, regardless of the outcome of that referral.

Finally, Varner argues that the grievance process was unavailable to him because of his mental illness. This Court has not previously addressed the question of whether mental illness may render administrative remedies unavailable and thus excuse § 1997e(a)'s exhaustion requirement. We need not reach that issue here, because the district court made a factual finding that Varner's mental illness did not prevent him from accessing the grievance process. We review the district court's factual findings for clear error. *Whatley I*, 802 F.3d at 1209. "Under clear error review, we will reverse only if after viewing all the evidence, we are left with the definite and firm conviction that a mistake has been committed." *Silva v. Pro Transp., Inc.*, 898 F.3d 1335, 1339 (11th Cir. 2018) (quoting *Sciarretta v. Lincoln Nat'l Life Ins. Co.*, 778 F.3d 1205, 1213 (11th Cir. 2015)).

Here, the district court found that the two diabetes-related grievances Varner filed on March 12, 2014, were "close enough in proximity" to the February 13, 2014, incident "to show Varner understood how to utilize the grievance procedure" within the ten-day window. The district court's finding that Varner's close-in-time grievances demonstrate that he was aware of the grievance process and capable of submitting a completed grievance is not clearly erroneous. Therefore, regardless of whether an inmate's mental illness may render an administrative remedy unavailable in some other case, it did not do so here.

B. Exhaustion

Varner argues in the alternative that his administrative remedies were, in fact, exhausted because a referral to the IIU actually occurred, which would have been his only relief under GDC's grievance procedures for an excessive use-of-force claim. "The plain language of the [PLRA] makes exhaustion a precondition to filing an action in federal court." *Higginbottom v. Carter*, 223 F.3d 1259, 1260 (11th Cir. 2000) (quoting *Freeman v. Francis*, 196 F.3d 641, 645 (6th Cir. 1999)) (rejecting exception to exhaustion requirement for excessive use-of-force claims). In *Woodford v. Ngo*, 548 U.S. 81, 93, 126 S.Ct. 2378, 165 L.Ed.2d 368 (2006), the Supreme Court held that "the PLRA exhaustion requirement requires proper exhaustion." Proper exhaustion "means using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits.)" *Id.* at 90, 126 S.Ct. 2378 (emphasis in original) (quoting *Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002)). Therefore, "[t]o exhaust administrative remedies in accordance with the PLRA, prisoners 'must properly take each step within the administrative process.' " *Bryant v. Rich*, 530 F.3d 1368, 1378 (11th Cir. 2008) (quoting *Johnson*, 418 F.3d at 1158).

In support of his exhaustion argument, Varner advances two points. First, he argues that his family's informal complaints ***1261** to ASMP and his own untimely grievances, either of which may have been the instigators of the referral to the IIU, satisfied the exhaustion requirement. Second, Varner argues that the fact that a referral occurred in and of itself satisfies the PLRA's exhaustion requirement, regardless of whether it was the result of the GDC's administrative process.

We turn first to Varner's family's informal complaints and his own untimely grievances. As noted earlier, Varner's parents each complained to ASMP almost immediately after Varner was beaten. While the GDC encourages the use of informal complaints like those lodged by Varner's parents, a formal grievance must be submitted to initiate the administrative process. These informal complaints therefore do not satisfy the "proper exhaustion" requirement established by *Woodford* and *Bryant*.

Regarding Varner's three grievances relating to the incident, there is no dispute that they were untimely; Varner filed the first grievance almost a year and a half after he was beaten. Varner argues, however, that his grievances may have been automatically forwarded to the IIU despite his procedural errors and that we should consider them as having satisfied the PLRA's exhaustion requirement. Our Court recognizes that a prison's waiver of a procedural defect in the grievance process can result in a waiver of its exhaustion defense. *See, e.g., Whatley v. Warden ("Whatley II")*, 898 F.3d 1072, 1084 (11th Cir. 2018) (holding that "a prison waives its procedural objections to considering the merits of a grievance, and therefore waives its exhaustion defense, if it does not *explicitly* rely on the grievance's procedural shortcomings as an adequate and independent ground for denying the grievance at the administrative level" (emphasis in original)). Here, however, there was no waiver. Specifically, Varner's first and third untimely grievances were not exhausted because Varner did not appeal their dismissal. *See Bryant*, 530 F.3d at 1378 ("If their initial grievance is denied, prisoners must then file a timely appeal."). And although Varner did appeal the dismissal of his second untimely grievance, the appeals investigator rejected the grievance as "out-of-time," i.e., the investigator explicitly relied on the grievance's procedural defect as a basis for denying Varner's grievance. *See Whatley II*, 898 F.3d at 1084. Thus, Varner's claim in his grievances is procedurally defaulted, not exhausted. *See Johnson*, 418 F.3d at 1159 ("[T]he PLRA's exhaustion requirements ... contain[s] a procedural default component.").

We now turn to Varner's argument that his administrative remedies were exhausted because a referral to the IIU occurred—the only relief that Varner could have received had he properly followed the GDC's administrative process, even though the referral resulted from something other than a properly submitted grievance (e.g., referral by the warden, Varner's parents' informal complaint, or Varner's own untimely grievances). At first blush, this seems like an attractive argument, particularly in light of the facts of this case where the referral to the IIU resulted in the resignation and ultimately the criminal conviction of several officers. Moreover, Varner's argument seems consistent with the policy reasons we have identified previously as underlying exhaustion requirements. *See, e.g.*, *Alexander v. Hawk*, 159 F.3d 1321, 1327 (11th Cir. 1998). But the equities of Varner's argument are not supported by either the statutory text or controlling precedent. And while, if we were writing the PLRA, we might craft a narrow exception to the exhaustion requirement to take into account the particular circumstances faced here, that is Congress's role and requires legislative, not judicial, action.

***1262** We turn first to the text of the statute. Title 42 U.S.C. § 1997e, "Suits by prisoners," provides in relevant part:

> **(a) Applicability of administrative remedies.** No 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.

Explicit in this statutory exhaustion requirement is Congress's mandate that an inmate exhaust his "administrative remedies." The use of the modifier "administrative" indicates, on its face, that exhaustion must be accomplished through an administrative process and not, as Varner proposes, via separate nonadministrative means.

Moreover, Varner's argument depends upon reading "remedies" to mean types of relief, as opposed to processes for obtaining such relief. That is, because the only relief that could be obtained via the administrative process has occurred, Varner's available administrative remedies have been exhausted. That reading of the statutory text, however, is foreclosed by the Supreme Court's decision in *Booth v. Churner*. In *Booth*, the Supreme Court noted that the word "remedy" can mean either "specific relief obtainable at the end of a process of seeking redress, or the process itself, the procedural avenue leading to some relief," and then concluded, based on the context in which the words appear, that "remedies" as used in § 1997e(a) refers to the administrative process, not the particular forms of relief occurring at the end of that process. 532 U.S. at 738–39, 121 S.Ct. 1819. As the Court explained:

> The entire modifying clause in which the words occur is this: "until such administrative remedies as are available are exhausted." The "available" "remed[y]" must be "exhausted" before a complaint under § 1983 may be entertained. While the modifier "available" requires the possibility of some relief for the action complained of ..., the word "exhausted" has a decidedly procedural emphasis. It makes sense only in referring to the procedural means, not the particular relief ordered. ... It makes no sense to demand that someone exhaust "such administrative [redress]" as is available; one "exhausts" processes, not forms of relief, and the statute provides that one must.

Id. (alterations in original) (quoting § 1997e(a)). Thus, "Congress meant to require *procedural* exhaustion regardless of the fit between a prisoner's prayer for relief and the administrative remedies possible." *Id.* at 739, 121 S.Ct. 1819 (emphasis added). And, as the Supreme Court stated subsequently in *Ross*, "all inmates must now exhaust all available remedies." 136 S. Ct. at 1858.

As is its prerogative, Congress established a bright line prerequisite for a suit by an inmate—in this case, the filing of a grievance pursuant to and in compliance with the process set forth in GDC's Handbook. Varner did not file a timely grievance, and referral to the IIU by the warden cannot satisfy Varner's obligation to properly initiate and complete the administrative process, as the warden's actions are outside the GDC's administrative process. Thus, based on the text of the PLRA, Varner's argument that the PLRA's exhaustion requirement was met without proper initiation and completion of GDC's administrative process must fail.

To the extent that Varner argues for an exception to the exhaustion requirement based on the particular facts here, that avenue is also foreclosed by the decisions of both the Supreme Court and this Court. As noted earlier, in *Ross*, the Supreme Court held that § 1997e(a)'s exhaustion ***1263** requirement is "mandatory," and "the PLRA's text suggests no limits on an inmate's obligation to exhaust—irrespective of any 'special circumstances.' " 136 S. Ct. at 1856. The only exception, which comes from the statutory text itself, is that an inmate need only exhaust those grievance procedures that are "available." *Id.* at 1858. As discussed above, none of the circumstances identified in *Ross* that would render an administrative remedy unavailable exist here—the relief for an excessive use-of-force claim was referral to the IIU, and that relief was available to Varner had

he filed a timely grievance, regardless of whether a referral to the IIU of the incident separately occurred outside of the administrative process.

We further note that in *Ross*, the Supreme Court explained that the basis for rejecting requests to create exceptions to the PLRA's "uncompromising statutory text," *id.* at 1857, even when the special circumstances of a particular case might seem to call for one,[5] was the structural separation of powers between the legislative and judicial branches:

> And [the exhaustion requirement's] mandatory language means a court may not excuse a failure to exhaust, even to take such circumstances into account. No doubt, judge-made exhaustion doctrines, even if flatly stated at first, remain amenable to judge-made exceptions. But a statutory exhaustion provision stands on a different footing. There, Congress sets the rules—and courts have a role in creating exceptions only if Congress wants them to. For that reason, mandatory exhaustion statutes like the PLRA establish mandatory exhaustion regimes, foreclosing judicial discretion.

Id. at 1856–57 (citations omitted). Indeed, the Court in *Ross* noted that it has "taken just that approach in construing the PLRA's exhaustion provision—rejecting every attempt to deviate ... from its textual mandate." *Id.* at 1857; *see also*, *Booth*, 532 U.S. 731, 121 S.Ct. 1819, 149 L.Ed.2d 958 (rejecting exception to the PLRA exhaustion requirement where specific relief was not provided by administrative process); *Porter v. Nussle*, 534 U.S. 516, 122 S.Ct. 983, 152 L.Ed.2d 12 (2002) (rejecting exception to the PLRA exhaustion requirement for excessive force claims); *Woodford*, 548 U.S. 81, 126 S.Ct. 2378, 165 L.Ed.2d 368 (rejecting exception to the PLRA exhaustion requirement for constitutional claims).

[5] The facts of *Ross* are similar to those here. In *Ross*, an inmate informally reported an assault to a senior corrections officer, who then referred the incident to the Maryland prison system's IIU. 136 S. Ct. at 1855. The IIU's final report resulted in the resignation (in lieu of termination) of one of the officers involved in the incident. *Id.* Significantly, despite his informal complaint, the inmate never filed a formal grievance under Maryland's administrative process because he thought "the IIU investigation seved as a substitute for that otherwise standard process." *Id.* The Fourth Circuit concluded that certain "special circumstances" created an exception to the PLRA's exhaustion requirement, in particular where an inmate reasonably, although mistakenly, thought that he had exhausted his remedies. *Id.* at 1856. The Supreme Court rejected this "special circumstances" exception based on the statutory language and history of the PLRA. *See id.* at 1856–58. The Court, however, remanded the matter for further consideration in light of evidence that Maryland prison officials routinely dismissed, as procedurally improper, administrative grievances when there was a pending parallel IIU investigation, which, if true, raised the possibility that the administrative remedies the inmate failed to exhaust in *Ross* were not "available" and therefore not subject to the statutory exhaustion requirement. *See id.* at 1858–62.

At its core, Varner's request is akin to a futility argument, i.e., because the only relief Varner could obtain from a timely ***1264** grievance has occurred, it would serve no purpose to enforce the PLRA's exhaustion requirement here. In *Alexander v. Hawk*, 159 F.3d 1321 (11th Cir. 1998), however, this Court rejected creating a futility exception to the PLRA. In *Alexander*, an inmate argued that the PLRA's exhaustion requirement did not apply because the federal Bureau of Prison's administrative remedies did not allow the agency to award him either monetary damages or his requested injunctive relieve, thereby rendering the administrative remedies futile and inadequate. *See id.* at 1325. In rejecting this argument, we stated that "the judicially recognized futility and inadequacy exceptions do not survive the new mandatory exhaustion requirement of the PLRA" and that, "[s]ince exhaustion is now a pre-condition to suit, the courts cannot simply waive those requirements where they determine they are futile or inadequate." *Id.* at 1325–26; *see also Higginbottom*, 223 F.3d at 1261 ("[T]he exhaustion requirement cannot be waived based upon the prisoner's belief that pursuing administrative procedures would be futile." (citing *Alexander*, 159 F.3d at 1323)). Thus, even absent *Ross* and the Supreme Court's other PLRA cases discussed therein, we are bound by our own precedent and must reject Varner's argument here. *See United States v. Vega-Castillo*, 540 F.3d 1235, 1237 (11th Cir. 2008); *Chambers v. Thompson*, 150 F.3d 1324, 1326 (11th Cir. 1998) ("We are bound to follow a prior panel or en banc holding, except where that holding has been overruled or undermined to the point of abrogation by a subsequent en banc or Supreme Court decision.").

IV. CONCLUSION

In the PRLA, Congress established a mandatory exhaustion requirement. As set forth in *Ross*, the only exception, which is established by the statutory text itself, is that administrative remedies must be available. Other than this single congressionally-created exception, the statutory language and relevant case law make it clear that courts are not free to fashion exceptions to the exhaustion requirement, even when the circumstances of a particular case may seem to merit one.

Here, GDC's grievance procedure was available to Varner. Because Varner did not file a timely grievance and because GDC did not waive the procedural defects in the untimely grievances that Varner did file, Varner failed to satisfy the PLRA's exhaustion requirement. The district court therefore properly dismissed Varner's suit with prejudice, and we affirm.

AFFIRMED.

JILL PRYOR, Circuit Judge, concurring in part and dissenting in part:

Christopher Varner suffered a horrific attack, resulting in serious injuries, at the hands of people entrusted to ensure his safety—guards at the prison where he was incarcerated. Because he was incarcerated, Mr. Varner was required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e, to exhaust available administrative remedies before filing this lawsuit against several of his attackers and prison officials. The majority explains, and I agree, that Mr. Varner failed to timely pursue the administrative procedures set forth in the Georgia Department of Corrections' ("GDC") grievance policy. I depart from the majority opinion, however, in that I would allow Mr. Varner to pursue this lawsuit because, in my view, there were no administrative remedies available to him. Respectfully, I dissent from the majority's conclusion to the contrary.

My disagreement with the majority opinion is quite limited in scope, if not in impact.[1] I agree with the majority's description ***1265** of GDC's grievance policies. Under those policies, grievances reporting the use of excessive force by prison personnel were "automatically forwarded" to GDC's Internal Investigations Unit ("IIU"), an action that "automatically end[ed] the grievance process," Doc. 29-2 at 17,[2] and "any subsequent investigation or action taken by the IIU [was] not part of the grievance procedure." Maj. Op. at 1256.[3] I agree that Mr. Varner did not timely file an excessive force grievance about his attack. The majority opinion accurately lays out the basic PLRA exhaustion framework, including that an incarcerated person cannot file a federal lawsuit "until such administrative remedies as are available are exhausted," 42 U.S.C. § 1997e(a), and that a procedure that "operates as a simple dead end" is not "available" within the meaning of the PLRA, *Ross v. Blake*, 578 U.S. 632, 136 S. Ct. 1850, 1859–60, 195 L.Ed.2d 117 (2016). A procedure is a dead end when it does not offer "the possibility of some relief for the action complained of." *Booth v. Churner*, 532 U.S. 731, 738, 121 S.Ct. 1819, 149 L.Ed.2d 958 (2001).

1 I concur in the majority opinion in all respects other than the one I discuss here.

2 "Doc." numbers refer to the district court's docket entries.

3 I use past tense here because GDC's policies have since been amended.

Where we disagree is the majority opinion's conclusion that the GDC policy offered the possibility of some relief for the action complained of—and thus was not a dead end, was "available," and was required to be exhausted—"in the form of forwarding the excessive force complaint to the IIU." Maj. Op. at 1259. Although I think the question is a close one, for reasons I will explain, I disagree that the automatic forwarding of an excessive force complaint qualifies as "relief." That is because further *process*—forwarding the complaint to the IIU, for whatever investigation that body undertakes—does not *substantively* address the underlying allegations, as the Supreme Court's *Booth* decision appears to require.

At issue in *Booth* was whether an incarcerated person "seeking only money damages" had to file a grievance complaining of prison personnel's use of excessive force when the "prison administrative process ... could provide some sort of relief on the complaint stated, but no money." *Booth*, 532 U.S. at 734, 121 S.Ct. 1819. The Supreme Court held that he must. *Id.* There, as here, "the crux of the case" was "[t]he meaning of the phrase 'administrative remedies ... available' " under the PLRA. *Id.* at 736, 121 S.Ct. 1819 (quoting 42 U.S.C. § 1997e(a)).[4] In parsing the meaning of these words, the Court differentiated "remedies" from "relief." "Remedies," the Court explained, are "the procedural means, not the particular relief ordered." *Id.* at 738–39, 121 S.Ct. 1819. The procedural means are "available" for exhaustion purposes when they offer "the possibility of

some *relief* for the action complained of." *Id.* (emphasis added).

[4] In *Booth* the parties disputed "whether or not a remedial scheme is 'available' where ... the administrative process has authority to take some action in response to a complaint, but not the remedial action an inmate demands." 532 U.S. at 736, 121 S.Ct. 1819. Here my disagreement with the majority opinion is more preliminary: What does it mean for there to be "some action in response to a complaint," that is, some form of relief available? To put it differently, if automatic referral of the complaint to the IIU is relief, then I would agree that under *Booth* Mr. Varner would be required to exhaust his remedies even though that relief did not resemble the relief he requested. The trouble is that I do not think referral to the IIU is relief under *Booth*.

Now, the more critical question: What is relief? The *Booth* Court explained that it is "some responsive action with respect to the type of allegations [the complainant] raises." *Id.* at 736 n.4, 121 S.Ct. 1819. In ***1266** other words, it is an "act on the subject of the complaint." *Id.* In *Booth*, this meant that the "grievance system addressed complaints of the abuse and excessive force Booth alleged," including through injunctive relief or a prison transfer, even though it lacked a provision for recovery of money damages. *Id.* at 734, 121 S.Ct. 1819. I read all these ways the Court described relief, both affirmatively and *in opposition to remedy*, to say that relief is substantive.

Without a doubt, the policy of automatically forwarding an excessive force complaint to the IIU achieves something—it provides the complainant further *process*. But it fundamentally does not provide any *substantive relief* on the allegations in the complaint. And for an administrative procedure to be "available," it must provide "the administrative officers" addressing the complaint "authority" to effect substantive relief. *Id.* at 736, 121 S.Ct. 1819 n.4. An administrative officer who automatically forwards the complaint to the IIU lacks any authority to affect any substantive relief whatsoever. Thus, under *Booth* I cannot see how the automatic forwarding of a complaint to Georgia's IIU is an available administrative remedy. Instead, it is a mere dead end.

I am not persuaded by the majority opinion's explanation why forwarding the complaint to the IIU is relief. The opinion explains that even though referral to the IIU is "limited" relief, it "may result in further relief," such as (and this happened here) removal of the officers. Maj. Op. at 1259. Setting aside my disagreement with the premise that this is relief at all, the problem with leaning on this logic is that any "further relief," *id.*, is outside the control of "the administrative officers," *Booth*, 532 U.S. at 736 n.4, 121 S.Ct. 1819, and so it is irrelevant for our exhaustion inquiry. *See also* Maj. Op. at 1255–56 (acknowledging that the IIU process is entirely separate from the grievance procedure).

This case is tough. I simply see the case slightly differently from the majority, and that slight difference has a significant impact for Mr. Varner and for PLRA litigation in Georgia. Under the majority's reasoning, an incarcerated person seeking to exhaust an excessive force claim in the state must only timely file a compliant grievance; this simple act "fulfill[s] [his] exhaustion requirement for purposes of the PLRA." *Id.* at 1259. This is not a heavy burden, but I would conclude that the PLRA requires even less. Since GDC's grievance procedure for excessive force claims is a dead end, I would not require Mr. Varner or anyone in his shoes to file a grievance at all.

All Citations

11 F.4th 1252, 29 Fla. L. Weekly Fed. C 305

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United States District Court, S.D. Georgia, Augusta Division.

Eugene GRIGGS, Christopher Varner, and Cameron Maddox, Plaintiffs,
v.
Ahmed HOLT, in his official capacity as Assistant Regional Director, Georgia Department of Corrections; Edward Philbin, in his official capacity as Warden, Augusta State Medical Prison;[1] Stan Shepard, in his individual capacity; Verneal Evans, Antonio Binns, Justin Washington, Lenon Butler, Rodgerick Nabors, Julian Greenaway, and Jerry Beard, Former Correctional Officers, Augusta State Medical Prison, in their individual capacities; Trei Bluitt, Janson Creagor, and John Doe, Correctional Officers, Augusta State Medical Prison, in their individual capacities, Defendants.

1 The Clerk is DIRECTED to add Defendants Holt and Philbin as parties to the case as discussed, *infra*, at 9-10.

CV 117-089
|
Signed 10/24/2018

Attorneys and Law Firms

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ORDER

J. RANDAL HALL, CHIEF JUDGE

***1** Before the Court are two motions to dismiss and a motion to sever. The first motion to dismiss is filed by Defendants Jerry Beard, Lenon Butler, Julian Greenaway, Rodgerick Nabors, Stan Shepard, and Scott Wilkes. (Doc. 29.) The other is filed by Justin Washington, who is proceeding pro se. (Docs. 38, 58.) Washington's motion and brief are identical to his fellow Defendants' filings, and, therefore, the Court will address them together. Plaintiffs filed a response in opposition to the motions to dismiss and Defendants submitted a reply brief in support. (Docs. 68, 77.) For the reasons stated below, Defendants' motion to dismiss (doc. 29) is **GRANTED IN PART AND DENIED IN PART** and Defendant Washington's motions to dismiss (docs. 38, 58) are **GRANTED.**

The motion to sever is filed by Defendants Jerry Beard, Trei Bluitt, Lenon Butler, Janson Creagor, Verneal Evans, Julian Greenaway, Rodgerick Nabors, Stan Shepard, and Scott Wilkes. Plaintiffs filed a response in opposition to the motion, and Defendants submitted a reply brief in support. (Docs. 69, 76.) For the reasons given below, Defendants' motion to sever (doc. 33) is **DENIED.**

I. BACKGROUND

This case began with a complaint filed by Christopher Varner, Eugene. Griggs, and Cameron Maddox, all inmates or former inmates at the Augusta State Medical Prison ("ASMP"); each man alleges he was the subject of an excessive force assault by

correctional officers at ASMP in violation of the Eighth and Fourteenth Amendments.

A. Christopher Varner's Excessive Force Allegations

On February 13, 2014, Varner was standing in the medication line at ASMP with other inmates. (Am. Compl., Doc. 7, ¶ 58.) Defendants Antonio Binns, Justin Washington, Lenon Butler, Rodgerick Nabors, and Julian Greenaway, all correctional officers, entered the hallway and began shouting epithets at the inmates. (Id. ¶ 59.) Varner verbally responded to the officers leading Sergeant John Williams to grab Varner and attempt to handcuff him. (Id. ¶ 60.) In response, Varner turned and struck Sgt. Williams in the head. (Id.) This prompted the officers to attack Varner by placing him in a chokehold until he lost consciousness. (Id. ¶ 61.) When Varner regained awareness, he was handcuffed and bleeding in a small vestibule off the hallway while the officers stood around him. (Id. ¶ 62.) The officers continued to punch, kick, and stomp Varner while he was handcuffed on the floor. (Id.)

Next, the officers escorted Varner to an elevator, and, upon entering it, they resumed assaulting Varner despite the fact that he was handcuffed and otherwise compliant. (Id. ¶¶ 64, 66.) The officers continued to use force against Varner while riding up and down the elevator four times. (Id. ¶ 67.) One officer used pepper spray on Varner's face, and Defendant Butler employed a metal baton to beat Varner. (Id. ¶ 68.) Upon exiting the elevator, the officers took Varner to ASMP's medical unit where the attacks continued. (Id.) A nurse in the medical unit pleaded with the officers to stop, but they persisted in attacking Varner with kicks to the face, pepper spray, and a metal baton. (Id. ¶¶ 68-69.)

***2** After the assault ended, Varner needed to be transferred to a civilian hospital for treatment of a broken eye socket, jaw, nose, and extensive bruising on his face and torso. (Id. ¶ 71.) Varner alleges that he continues to suffer pain in his jaw and feet; frequent headaches; and an exacerbation of his pre-existing mental illnesses, schizophrenia and bipolar disorder. (Id. ¶¶ 34, 71.) In April 2017, Defendants Binns and Washington as well as Sgt. Williams were convicted and sentenced in this Court for their role in assaulting Varner. (Id. ¶ 72.)

B. Investigations Regarding the Assault on Varner

On the same day that Varner was assaulted, an inmate called Varner's father, Thomas Starkey, to inform him about Varner's medical condition. (Decl. of Thomas Starkey, Doc. 68-12, ¶ 8.)[2] Starkey and Varner's mother telephoned the Warden's office to express concerns over the incident. (Id. ¶ 9; Decl. of Trade Davis, Doc. 68-13, ¶¶ 7-9.) An incident report was generated in which the Warden recommended turning the investigation over to an internal affairs unit. (Incident Report No. 142128, Doc. 68-8, at 1.) An investigation was then conducted by the Georgia Department of Correction's ("GDC") Internal Investigations Unit ("IIU"). The investigator interviewed Defendants Binns and Washington as well as Sgt. Williams. (Doc. 77-3, at 2-3.) The investigation report noted that after the February 13th incident, each man resigned in lieu of termination. (Id. at 3-4.)

[2] Although evidence contained outside the pleadings is generally not considered in a motion to dismiss, outside evidence not bearing on the merits of the case may be considered by the Court when analyzing whether a prisoner exhausted his administrative remedies, as required by the Prison Litigation Reform Act. Bryant v. Rich, 530 F.3d 1368, 1374-75 (11th Cir. 2008).

On July 24, 2015, seventeen months after the assault, Varner filed a grievance about the incident alleging Washington, Greenaway, Butler, and Sgt. Williams broke his jaw, nose, and eye socket. (Grievance No. 201318, Doc. 68-11, at 3.) The ASMP Grievance Coordinator and Warden both rejected the grievance as untimely. (Id.)

Nearly a year later, on June 24, 2016, Varner filed a second grievance regarding the February 13th incident. (Grievance No. 222227, Doc. 68-11, at 4.) In that submission, Varner requested leave to file out of time because he is "mental health with brain damage" and stated, "I had no clue to grieve for [sic] I can sue in the name of the law." (Id.) This grievance was also rejected by the Grievance Coordinator and Warden for being untimely; both also noted that the staff members named by Varner were no longer employed at ASMP. (Id.) After rejection of the grievance, Varner filed a Central Office Appeal. (Decl. of Shareka Browman, Doc. 77-1, ¶ 15.) On appeal, the decision to reject the grievance as untimely was upheld. (Id.)

Finally, on June 21, 2017, Varner filed a third grievance about the incident and again requested leave to file out of time.

(Grievance No. 247024, Doc. 68-11, at 6.) Varner cited his inability to comprehend civil law and the limiting effect of his injuries following the assault as justification for the late filing. (Id.) The grievance was again rejected as untimely by administrators without comment on whether Varner had shown good cause for his untimeliness. (Id.)

C. Cameron Maddox's Excessive Force Allegations

Plaintiff Cameron Maddox also alleges he was assaulted with excessive force by correctional officers at ASMP. On September 27, 2016, Maddox was handcuffed and removed from his cell because an officer suspected Maddox of fighting with his cellmate. (Am. Compl., ¶ 90.) Maddox was examined at the medical unit for signs of any injuries sustained during the suspected fight; none were found. (Id. ¶ 92.) Defendants Janson Creagor and Trei Bluitt, both correctional officers, then escorted the handcuffed Maddox to an administrative segregation cell. (Id. ¶ 96.) While riding in the elevator, Bluitt began punching Maddox in the thigh while Creagor kneed Maddox in the torso. (Id. ¶ 95.) Next, Bluitt used a baton to strike him while both officers criticized Maddox for attacking his cellmate. (Id.) Throughout this attack, Maddox maintains he was handcuffed and compliant. (Id. ¶ 93.)

***3** Once inside the segregation cell the officers continued their assault of Maddox. (Id. ¶¶ 96-97.) At one point, Creagor pushed Maddox's head into the cell wall causing a laceration on his forehead. (Id. ¶ 97.) Before leaving the cell, the officers instructed Maddox to clean up the blood from his head. (Id. ¶¶ 98-99.) The next day, before Maddox was allowed to meet with his visiting mother, he was taken to the medical unit to receive treatment for the cut on his head and change into a uniform without blood stains. (Id. ¶¶ 100-01.) In addition to the head laceration, Maddox sustained bruises on his leg. (Id. ¶ 102.)

D. Eugene Griggs's Excessive Force Allegations

On July 27, 2015, Plaintiff Eugene Griggs attempted to visit his mental health counselor. (Am. Compl., ¶ 79.) While Griggs was waiting in line, Defendant Verneal Evans ordered Griggs and other prisoners to clear the hallway where they were lined up and to wait outside a door at the end of the hallway. (Id. ¶ 80.) Griggs complied with the instruction and began walking to the doorway. (Id. ¶ 81.) Following after Griggs, Evans began to walk through the doorway, but he was distracted by giving orders to other inmates. (Id. ¶ 82.) This distraction caused Griggs and Evans to inadvertently bump into one another. (Id.) In response, Evans grabbed Griggs by the throat and pushed him against the wall before slamming Griggs to the ground. (Id. ¶ 83.)

As a result of the incident, Griggs suffered bruising on his shoulder blades and experienced pain in his head, neck, and shoulders. (Id. ¶ 85.) Upon examination in the medical unit, a physician's assistant determined that Griggs suffered no visible injuries. (Id. ¶ 88.) Griggs further alleges he has been stunned with a taser on two separate occasions after the July 27th incident, both times without sufficient provocation. (Id. ¶¶ 127-28.)

E. Allegations of ASMP's Ongoing Practice of Using Excessive Force

Plaintiffs allege the above described assaults and multiple others mentioned in the Amended Complaint[3] represent ASMP's "longstanding pattern and practice" of correctional officers using excessive force on prisoners solely to inflict pain on inmates, many of whom suffer from debilitative physical and mental illnesses. (Id. ¶¶ 104, 107.) Correctional officers use secluded areas, such as elevators, to conduct these attacks because those areas are not under video surveillance. (Id. ¶ 106.) Plaintiffs allege prison administrators, namely Defendants Stan Shepard and Scott Wilkes, have failed to correct these practices and routinely downplay or ignore credible complaints of excessive force by inmates. (Id. ¶¶ 117-21.) Finally, because Maddox and Griggs are still housed at ASMP, they face an ongoing risk of being harmed by correctional officers using excessive force. (Id. ¶¶ 126, 132.)

3 (See Am. Compl., ¶¶ 109-14.)

Based on the foregoing facts, each Plaintiff brings a claim for damages against their attackers. In Count I, Varner alleges Defendants Washington, Binns, Butler, Nabors, and Greenaway violated his Eighth and Fourteenth Amendment rights during the February 13th incident. (Id. ¶¶ 143—46.) Griggs alleges Defendant Evans violated his Eighth and Fourteenth Amendment rights during the July 27th incident. (Id. ¶¶ 139-42.) Lastly, Maddox alleges Defendant Bluitt and Creagor violated his Eighth and Fourteenth Amendment rights during the September 27th incident. (Id. ¶¶ 147-50.)

In Count II, Varner brings a claim for damages against Defendants Stan Shepard and Jerry Beard, in their individual capacities, under a theory of supervisor liability for their failure to take reasonable steps to prevent the February 13th assault. (Id. ¶¶ 151-59.) Varner specifically alleges Beard "had personally ordered, authorized, or condoned the use of excessive force against prisoners" at ASMP. (Id. ¶ 155.)

***4** Finally, in Count III, Maddox and Griggs bring a claim for declaratory and injunctive relief against Defendant Stan Shepard, Assistant Regional Director for the North Region of the GDC, and Defendant Scott Wilkes, Warden of ASMP. (Id. ¶¶ 160-63.) This claim is brought against Wilkes and Shepard, in their official capacities, to prevent further violations of Griggs and Maddox's rights under the Eighth and Fourteenth Amendments.

Since filing the Amended Complaint, both Shepard and Wilkes have been replaced in their respective positions. (Docs. 62, 65.) Under Federal Rule of Civil Procedure 25(d), when a party sued in his official capacity resigns his position, the party's successor is automatically substituted into the case. **IT IS THEREFORE ORDERED** that ASMP's new Warden Edward Philbin is substituted for Defendant Scott Wilkes and GDC's new Assistant Regional Director Ahmed Holt is substituted for Stan Shepard.[4] Both Holt and Philbin are Defendants only in their official capacities.

[4] The Clerk is **DIRECTED** to terminate Defendants Wilkes and Shepard as parties.

II. DISCUSSION

Defendants' motion to dismiss raises two issues. First, Defendants that are the subject of Varner's claims argue that Varner failed to exhaust his administrative remedies through the GDC grievance procedure, as required by the Prison Litigation Reform Act, and therefore Varner is barred from bringing this action. Second, Defendants Shepard and Wilkes, now Holt and Philbin, contend Plaintiffs' claims for declaratory and injunctive relief should be dismissed for failure to state a claim. The Court will first address Defendants' position that Varner failed to exhaust his administrative remedies.

A. Varner's Exhaustion of Administrative Remedies

1. Georgia Department of Correction's Grievance Procedure

To start, it is important to outline the GDC grievance procedure that applied to Varner. The process commences with an inmate filing a grievance, which must be submitted within ten calendar days from the "date the offender knew, or should have known, of the facts giving rise to the grievance." (GDC's Standard Operating Procedure ("SOP") IIB05-0001, Doc. 29-2, Attach. A, at 7.) The prison's Grievance Coordinator screens the complaint to recommend whether the Warden should accept or reject the grievance. (Id.) The SOP gives four situations in which the Warden should reject a grievance. (Id. at 7-8.) Relevant here is rejection for the grievance not being filed within the ten-day deadline. (Id. at 7.) However, the Grievance Coordinator may waive the time limit for "good cause." (Id.) The SOP defines good cause as "a legitimate reason involving unusual circumstances that prevented the offender from timely filing a grievance or an appeal. Examples include: serious illness [or] being housed away from a facility covered by this procedure." (Id. at 2.) An inmate can file an appeal with the Central Office where the Grievance Coordinator rejects the grievance, once the Warden responds to the grievance, or after the forty-day period allowed for the Warden's response expires without a decision. (Id. at 8-11.)

Special rules apply to grievances that allege the use of physical force involving non-compliance with GDC policies. Such grievances are "automatically forwarded through the Scribe application to [the] Internal Investigation Unit and/or the PREA Coordinator for review and whatever action is deemed appropriate." (Id. at 10) (emphasis omitted). "Once a grievance is

referred to [the] Internal Investigation Unit and/or the PREA Coordinator, then this is the final action that will be taken on the Grievance and terminates the grievance procedure." (Id.) (emphasis omitted).

2. PLRA Administrative Exhaustion Standard

***5** The Prison Litigation Reform Act ("PLRA") provides: "No 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 a jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). The purpose of the exhaustion requirement is, among other things, to allow an institution the time and opportunity to internally address complaints, to build an administrative record that clarifies the controversy, and to filter out frivolous claims. Porter v. Nussle, 534 U.S. 516, 525, 122 S.Ct. 983, 152 L.Ed.2d 12 (2002).

Because exhaustion of administrative remedies is a matter of abatement and not an adjudication on the merits, issues of exhaustion under the PLRA are to be decided on a motion to dismiss. Bryant v. Rich, 530 F.3d 1368, 1374-75 (11th Cir. 2008). Although analyzed as a motion to dismiss, "it is proper for a judge to consider facts outside the pleadings and to resolve factual disputes so long as the factual disputes do not decide the merits." Id. at 1376.

The Eleventh Circuit uses a two-step process for analyzing exhaustion. First, the court compares the factual allegations in the defendant's motion to dismiss with those in the plaintiff's response, and, where a conflict exists, the court takes the plaintiff's version of the facts as true. Turner v. Burnside, 541 F.3d 1077, 1082 (11th Cir. 2008). If, under that light, the defendant is entitled to dismissal for the plaintiff's failure to exhaust administrative remedies, the complaint should be dismissed. Id.

Where dismissal is inappropriate at the first step, the court must make specific factual findings to resolve disputed issues related to exhaustion. Id. At this stage, because exhaustion is an affirmative defense and not a pleading requirement, the defendant has the burden of proving the plaintiff failed to exhaust his available administrative remedies. Id. (citing Jones v. Bock, 549 U.S. 199, 216, 127 S.Ct. 910, 166 L.Ed.2d 798 (2007)).

In this case, the parties make diverging allegations over whether an administrative remedy was available to Varner and whether the grievances Varner did file about the February 13th incident properly exhausted his remedies under the PLRA. As such, the Court must take Varner's version of the facts as true and finds Defendants are not entitled to dismissal because Varner alleges the GDC grievance procedure did not provide an available remedy to him.

Accordingly, the Court must move to the second Turner step and make specific findings to resolve the parties' factual disputes regarding exhaustion. Broadly speaking, the parties dispute three issues: (1) whether an administrative remedy was available to Varner, (2) whether the IIU's internal investigation satisfies Varner's exhaustion requirement, and (3) whether the three grievances Varner submitted regarding the February 13th incident properly exhausted his administrative remedies. The Court will address each issue in turn.

3. Availability of Administrative Remedies

Varner's principal argument is that GDC's grievance procedure does not provide him a remedy. In Ross v. Blake, 578 U.S. ——, 136 S.Ct. 1850, 195 L.Ed.2d 117 (2016), the United States Supreme Court announced three situations where an administrative remedy is unavailable to a prisoner. Id. at 1859-60. First, an administrative procedure is unavailable when prison officials refuse to follow established grievance policy or are "consistently unwilling" to provide relief to inmates. Id. at 1859. Second, the administrative process might be so confusing or vague that it is "essentially unknowable." Id. Importantly, the Supreme Court imposes an objective standard, requiring the rules to be so confusing that "no *ordinary* prisoner can discern or navigate it ... no *reasonable* prisoner can use them." Id. (emphasis added). Finally, a remedy may be unavailable where prison administrators prevent inmates from filing grievances through "machination, misrepresentation, or intimidation." Id. at 1860. Varner makes no allegations or arguments under the third situation, but does address the other two.

***6** To the extent Varner argues that his mental condition prevented him from understanding the grievance process and the need to complain about the February 13th incident, that argument must fail. In Ross, the Supreme Court rejected the Fourth Circuit's "special circumstances" test and held the PLRA does not permit any discretionary "judge-made exceptions" to the

exhaustion requirement. 136 S.Ct. at 1856. As noted above, the second availability exception requires the court to apply an objective standard, not a subjective standard that considers an inmate's special circumstances. Here, the evidence shows that each inmate is given an oral explanation of the grievance procedure upon entering the custody of the GDC and a copy of the Orientation Handbook for Offenders. (Decl. of Shareka Browman, ¶ 4.) Further, inmates can access a copy of the grievance procedure at the facility or law library. (Id.)

To hold, as Varner would have the Court do, that his inability to know that he needed to file a grievance about the incident makes a remedy unavailable to him would carve out a special circumstance for a particular plaintiff, a practice the Supreme Court unequivocally rejected in Ross. Indeed, "in construing the PLRA's exhaustion provision [the Supreme Court] reject[ed] every attempt to deviate ... from its textual mandate." Id. at 1857. Although the application of the objective standard mandated by Ross unavoidably leads to the harsh result that an administrative remedy was available to Varner despite his mental illnesses, the Court is bound to follow Supreme Court precedent.

Moreover, an exception for Varner would be especially hard to justify considering he filed two unrelated grievances about his health care on March 12, 2014. (Doc. 29-2, Attachs. C, D.) Although these grievances were filed just beyond the ten-day window for filing a complaint about the February 13th incident, they are close enough in proximity to show Varner understood how to utilize the grievance procedure. As such, the Court finds that ASMP's grievance procedure provided an available remedy to Varner for the February 13th incident.

Next, Varner contends that the GDC grievance procedure for excessive force complaints operates as a dead end that cannot provide relief because such grievances are automatically forwarded to the IIU, which terminates the grievance procedure. The filing of an excessive force grievance is not a dead end, rather it is the one action that would satisfy Varner's duty to exhaust his administrative remedies. In White v. Staten, 672 F. App'x 919 (11th Cir. 2016) (per curiam), the court interpreted the same grievance procedure that is at issue in this case. Id. at 921-22. The court found that timely filing an excessive force grievance was all a prisoner needed to do to exhaust his administrative remedies because such grievances are automatically forwarded to the IIU, at which point the grievance process terminates. Id. at 923.

Further, filing an excessive force grievance that is automatically forwarded to the IIU does provide some prospect of relief to prisoners, contrary to Varner's position. Here, the IIU investigation initiated by ASMP's Warden led to Sgt. Williams and Defendants Washington and Binns resigning from ASMP in lieu of termination. (Report of Investigation, Doc. 77-3, at 3-4.) In addition, the investigation was responsible for the three officers being prosecuted under 18 U.S.C. § 242 for deprivation of rights under color of state law. See United States of America v. Williams, et al., l:16-CR-024 (S.D. Ga. April 7, 2016). These facts show that an IIU investigation, whether requested on the Warden's own initiative or by an inmate grievance, can provide relief to a prisoner.[5] The question then becomes whether an IIU investigation that is commenced without a prisoner filing a grievance can satisfy the PLRA's exhaustion requirement.

[5] The Court emphasizes these facts are used for the sole purpose of resolving whether an IIU investigation can provide relief to an aggrieved prisoner and should not be construed as deciding the merits of Varner's claims. See Bryant, 530 F.3d at 1374-75.

4. The IIU's Investigation

***7** Varner contends that the IIU investigation initiated by ASMP's Warden satisfied his duty to exhaust administrative remedies. This argument confuses the role of the IIU with Varner's independent duty to exhaust administrative remedies available to him.

It appears that the Eleventh Circuit has not directly addressed whether an internal investigation satisfies a prisoner's exhaustion requirement. Every other Circuit to consider the issue, however, has decided it does not. The Sixth, Seventh, and Ninth Circuits have all concluded that a related internal investigation does not, by itself, satisfy the PLRA's exhaustion requirement. Pavey v. Cooley, 663 F.3d 899, 905 (7th Cir. 2011); Panero v. City of North Las Vegas, 432 F.3d 949, 953 (9th Cir. 2005); Thomas v. Woolum, 337 F.3d 720, 734 (6th Cir. 2003), *abrogated on other grounds by* Woodford v. Ngo, 541 U.S. 81, 87 (2006). Even the prisoner's direct involvement and cooperation with an internal investigation will not satisfy the exhaustion requirement. Id.

To determine whether a prisoner exhausted his administrative remedies, the court must "look to the inmate's grievance, not to other information compiled in other investigations." Panero, 432 F.3d at 953. After all, § 1997e(a) is directed at the *prisoner's* administrative remedies, not other related investigations. Id. (citing Thomas, 337 F.3d at 734).

Varner correctly emphasizes that the GDC grievance procedure requires an inmate's excessive force grievance to be automatically forwarded to the IIU for investigation, thereby ending the grievance process. However, Varner's contention that the commencement of an IIU investigation by a prison official serves the same purpose as an inmate's grievance being automatically forwarded to the IIU goes too far. As shown above, the PLRA exhaustion requirement requires the prisoner to exhaust the remedies that are available to *him*, not separate and independent administrative processes.

Thus, Varner was required to use the GDC grievance procedure to exhaust his administrative remedies. Under that procedure, Varner needed to timely file a grievance about the February 13th incident within ten days to satisfy the exhaustion requirement. See White, 672 F. App'x at 923 (finding, under the same SOP as applies in this case, prisoner alleging use of excessive force need only file a timely grievance to exhaust his administrative remedies). However, that did not happen. Varner failed to submit a grievance about the February 13th incident until July 24, 2015, more than seventeen months later. (Doc. 68-11, at 3.) Contrary to Varner's position, the Court finds that the IIU investigation into the February 13th incident cannot serve as a stand-in for his duty to exhaust his administrative remedies through the GDC's grievance procedure.

5. Varner's Three Grievances

Finally, Varner argues that he did file three grievances complaining of the February 13th incident, at least one of which was arbitrarily rejected by administrators at ASMP. While it is true that Varner filed these grievances, each was at least seventeen months past the deadline. These grievances cannot satisfy Varner's obligation to exhaust his administrative remedies because they were not "proper." Woodford, 541 U.S. at 92, 124 S.Ct. 1379. The Supreme Court has made clear that proper exhaustion requires compliance with the prison's administrative deadlines and critical procedural rules. Id. Put differently, it is the institution itself, not the PLRA, that "define[s] the boundaries of proper exhaustion." Jones v. Bock, 549 U.S. at 218, 127 S.Ct. 910. Thus, Varner's untimely grievances cannot satisfy his duty to exhaust, particularly because the grievances were filed far past the ten-day deadline. See Johnson v. Meadows, 418 F.3d 1152, 1159 (11th Cir. 2005) ("Allowing [a plaintiff's] untimely grievances to meet the exhaustion requirement runs counter to the understanding that § 1997e(a) requires prisoners to invoke and fully exhaust all available administrative grievance processes.").

***8** Alternatively, Varner contends that the untimeliness of his grievances should have been excused for good cause under the GDC's grievance policy definition, which includes excusal for serious illness. Each grievance was explicitly rejected as untimely by the Grievance Coordinator at ASMP and, again, by the Warden, neither of whom addressed the merits of Varner's allegations.[6] (Doc. 68-11, at 4-7.) Further, each of the rejections made no mention of why Varner did not qualify for excusal for good cause. (Id.)

6 See Whatley v. Smith, 898 F.3d 1072, 1083-84 (11th Cir. 2018) (when prison administrators consider the merits of a procedurally flawed grievance, the prison waives its exhaustion defense).

Varner's first grievance, filed in 2015, did not specify a reason as to why it should be accepted as untimely, as required by GDC's policy. Thus, the rejection of that grievance cannot be considered arbitrary. When Varner filed his next grievance a year later, he did, contrary to Defendant's assertion, specify a reason as to why the grievance was late, namely that Varner has "mental health [issues] with brain damage." ASMP's Grievance Coordinator concluded this did not provide good cause, presumably because the grievance was filed almost two and half years late and after Varner had filed at least six unrelated grievances since the February 13th incident. (Doc. 29-2, Attach. B.) As such, it cannot be said that the grievance was arbitrarily rejected. Finally, Varner submitted his third grievance in 2017, which more clearly states his reasons for the late submission. Varner notes that his injuries, isolated status, and inability to comprehend civil law prevented him from filing a timely grievance. This grievance was, predictably, rejected as untimely as it had missed the filing deadline by three and a half years.

Moreover, Varner's first and third grievances were not appealed as required by the GDC grievance procedure. Thus, neither

grievance, even if arbitrarily rejected, can satisfy the exhaustion requirement. See Woodford, 541 U.S. at 92, 124 S.Ct. 1379; see also Bryant, 530 F.3d at 1378-79 (prisoner must follow institution's grievance appeal procedure to exhaust his administrative remedies). In sum, the Court finds that Varner's grievances were not "proper" because of the significant delay in filing them and that ASMP administrators did not arbitrarily decide Varner failed to show good cause for his untimeliness. In accordance with the foregoing, Defendants' motion to dismiss Plaintiff Varner's complaint for failure to exhaust administrative remedies under the PLRA is granted and Varner's claims are dismissed.

B. Plaintiffs' Claims for Declaratory and Injunctive Relief

The Court now turns to Defendants' second argument, which asks the Court to dismiss Griggs and Maddox's request for declaratory and injunctive relief against Holt and Philbin. Defendants contend Griggs and Maddox fail to state a claim because their request for declaratory relief is barred by the Eleventh Amendment and their request for injunctive relief is barred by the PLRA.

1. Legal Standard for Motion to Dismiss Under Rule 12(b) (6)

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) does not test whether the plaintiff will ultimately prevail on the merits of the case. Rather, it tests the legal sufficiency of the complaint. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 511, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002) (quoting Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)). Therefore, the court must accept as true all facts alleged in the complaint and construe all reasonable inferences in the light most favorable to the plaintiff. See Hoffman-Pugh v. Ramsey, 312 F.3d 1222, 1225 (11th Cir. 2002).

***9** The court, however, need not accept the complaint's legal conclusions as true, only its well-pled facts. Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). A complaint also must "contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.' " Id. at 678, 129 S.Ct. 1937 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). The plaintiff is required to plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. Although there is no probability requirement at the pleading stage, "something beyond ... mere possibility ... must be alleged." Twombly, 550 U.S. at 556-57, 127 S.Ct. 1955 (citing Durma Pharm., Inc. v. Broudo, 544 U.S. 336, 347, 125 S.Ct. 1627, 161 L.Ed.2d 577 (2005)).

2. The Eleventh Amendment

In Ex Parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), the Supreme Court created an exception to the Eleventh Amendment, which limits the power of federal courts to hear suits against a state, in holding that a suit challenging the constitutionality of a state official's action in enforcing state law is not an action against the state. Id. at 159-60, 28 S.Ct. 441. However, the Eleventh Amendment, as interpreted by the Supreme Court, still bars actions against states for retroactive relief, whether that relief be in the form of damages or a declaration that a state officer violated a plaintiff's rights in the past. Green v. Mansour, 474 U.S. 64, 73, 106 S.Ct. 423, 88 L.Ed.2d 371 (1985) (prohibiting declaratory relief when there is no allegation of ongoing violation of federal law); Edelman v. Jordan, 415 U.S. 651, 667-68, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974) (prohibiting retroactive award of monetary relief). To decide whether the rule of Ex Parte Young avoids an Eleventh Amendment bar to suit, "a court need only conduct a 'straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.' " Verizon Maryland, Inc. v. Public Serv. Comm'n of Maryland, 535 U.S. 635, 645, 122 S.Ct. 1753, 152 L.Ed.2d 871 (2002) (quoting Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 296, 117 S.Ct. 2028, 138 L.Ed.2d 438 (1997)).

Here, the Amended Complaint alleges Griggs, Maddox, and other prisoners at ASMP "*will be* subjected to excessive force by correctional officers" and prison officials have failed to reduce the risk that prisoners "*will be* subjected" to further violations of their rights. (Am. Compl., ¶ 162 (emphasis added).) Although Plaintiffs' prayer for relief asks the Court to declare Defendants "violated Plaintiffs' rights," both their brief and complaint show that Plaintiffs are seeking a prospective declaration that Holt and Philbin are presently violating Plaintiffs' rights. (Pls.' Resp. in Opp'n to Mot. to Dismiss, Doc. 68, at 23 n.16; Am. Compl. ¶¶ 162-63.) As such, the Eleventh Amendment does not bar Plaintiffs' claims for prospective

declaratory relief.

Defendants also contend the Eleventh Amendment bars Griggs and Maddox from pursuing damages against Holt and Philbin. However, Griggs and Maddox are not seeking damages from either,[7] only prospective declaratory and injunctive relief against those Defendants in their official capacities, as allowed under Ex Parte Young. Moreover, should an expenditure of state funds eventually prove to be necessary as a result of any prospective relief the Court may grant, the Supreme Court has explicitly allowed such expenditures, noting they are an "inevitable consequence of the principle announced in Ex Parte Young." Edelman, 415 U.S. at 668, 94 S.Ct. 1347.

7 While Count II of the Amended Complaint does seek damages against Philbin's predecessor Stan Shepard, it does so only in Shepard's individual capacity. Further, only Varner, not Griggs and Maddox, seeks damages, and, as noted above, Varner's claims are dismissed.

3. Declaratory and Injunctive Relief

***10** Defendants claim Griggs and Maddox are not entitled to declaratory relief because they have an adequate remedy available to them, i.e., this lawsuit. Ignoring the circular nature of this argument, Federal Rule of Civil Procedure 57 explicitly provides: "The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate." Thus, the availability of other remedies does not require the Court to dismiss Plaintiffs' claim for declaratory relief.

Next, Defendants cite Federal Rule of Civil Procedure 65(d) and § 3626(a)(1) of the PLRA to argue that Plaintiffs' request for an injunction fails to state a claim because it is too vague and amounts to a request that Defendants simply obey the law. Rule 65(d), however, governs the required specificity of an "order granting an injunction," not a pleading. See Fed. R. Civ. P. 65(d) (emphasis added). Moreover, Plaintiffs specifically mention in their prayer for relief that particular injunctive provisions will be determined after conducting discovery. (Am. Compl., at 51.)

Likewise, the PLRA's limitations on prospective relief under § 3626(a)(1)'s "need-narrowness-intrusiveness" test is "a limitation on judicial authority over prisons at the remedial stage, not a heightened pleading requirement imposed on the plaintiffs." Henderson v. Thomas, 891 F.Supp.2d 1296, 1312 (M.D. Ala. 2012); see also Williams v. Edwards, 87 F.3d 126, 133 (5th Cir. 1996) ("The district court has fashioned no prospective relief and the provisions of [§ 3626] have yet to be triggered in this case."). If the Court later concludes that injunctive relief is appropriate, the Court will then rely on § 3626(a)(1) to craft that relief. Accordingly, Defendants' motion to dismiss Plaintiffs' claims for declaratory and injunctive relief is denied.

C. Defendants' Motion to Sever

Defendants move to sever Plaintiffs' claims under Federal Rule of Civil Procedure 20. They argue that such claims do not arise out of the same transaction or occurrence because each Plaintiff's excessive force allegations involve separate incidents with different defendants. Defendants further contend that although Plaintiffs bring the same type of claims, each involves the resolution of unrelated factual disputes.

In response, Plaintiffs argue that their claims arise out of the same series of transactions or occurrences, namely that each Plaintiff was assaulted as part of a "pattern and practice" at ASMP of using excessive force solely to inflict pain on inmates. (See Am. Compl. ¶ 104.)

Federal Rule of Civil Procedure 20(a)(1) governs the joinder of plaintiffs in a lawsuit and uses a flexible standard that requires the plaintiffs to "assert any right to relief ... arising out of the same transaction, occurrence, or series of transactions or occurrences" and there be a "question of law or fact common to all plaintiffs." Fed. R. Civ. P. 20(a) (1)(A), (B). In the Eleventh Circuit, "joinder is 'strongly encouraged' and the rules are construed generously 'toward entertaining the broadest possible scope of action consistent with fairness to the parties.' " Vanover v. NCO Fin. Servs. Inc., 857 F.3d 833, 839 (11th Cir. 2017) (quoting United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 724, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966)).

District courts are granted "broad discretion" when considering matters of joinder. Id.

Under the first part of Rule 20's test, transaction "is a word of flexible meaning. It may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship." Alexander v. Fulton Cnty., 207 F.3d 1303, 1323 (11th Cir. 2000), *overruled on other grounds by* Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003). Thus, events that are "logically related" to one another are "generally regarded as comprising a transaction or occurrence." Id. (internal quotations omitted).

***11** In Alexander, the Eleventh Circuit concluded that an allegation "of a pattern or practice of discrimination may describe such logically related events and satisfy the same transaction requirement." Id. Although that case concerned race discrimination by a state employer and not excessive force practices at a prison, the salient point is that an unlawful pattern or practice can satisfy the same transaction requirement. Other courts have agreed. In Revilla v. Glanz, 7 F.Supp.3d 1207 (N.D. Okla. 2014), the court permitted the joinder of four prisoners who alleged Tulsa County Jail's health services had a policy or practice of providing constitutionally deficient medical care. Id. at 1213. Although each plaintiff's injury or death was caused by different ailments, involved different medical staff, and occurred over the span of eighteen months, the court found there was "a logical relationship between circumstances underlying the claims" that permitted joinder of the plaintiffs. Id.

Here, the Amended Complaint alleges a pattern or practice at ASMP of using excessive force solely to harm inmates. While each incident of excessive force occurred separately, Plaintiffs create a "logical relationship" between each event in their allegations that the use of excessive force is a routine practice at ASMP and prison administrators are aware of this practice but refuse to take reasonable steps to prevent further assaults. Indeed, beyond the Plaintiffs' individual incidents, the complaint alleges in detail at least six other assaults by officers on non-party inmates. (Am. Compl. ¶¶ 109-15.) Many of these incidents involve the same correctional officers now joined as Defendants. Finally, while it is true each Plaintiff brings a damages claim against the officers alleged to have assaulted him,[8] the gravamen of the complaint is to seek an end to this ongoing practice at ASMP.

[8] Only Varner brings a claim for supervisory liability. Because his claims are barred by the PLRA's exhaustion requirement, the only remaining damages claims are the ones brought by Griggs and Maddox against Defendants Evans, Creagor, and Bluitt respectively.

The second part of Rule 20's test "does not require that *all* question of law and fact raised by the dispute be common, but only that *some* question of law or fact be common to all parties." Alexander, 207 F.3d at 1324 (emphasis in original). While Defendants correctly point out that an Eighth Amendment analysis of each of Plaintiff's individual incidents will present different facts, the determination of all other claims requires answers to overlapping questions of policies and practices at ASMP, the knowledge of prison administrators regarding the pattern of incidents, and the preventative measures those administrators did or did not take to address excessive force incidents. Thus, there are at least some shared questions of law and fact. Furthermore, the dismissal of Varner from the suit reduces the number of different factual questions and the potential for prejudice to Defendants. Accordingly, the Court finds that Plaintiffs satisfy Rule 20's requirements for joinder.

This holding, however, does not foreclose the possibility of severance at a later time. It may be, upon development of the evidence during discovery, Plaintiffs' claims should be severed for trial. If necessary, the Court has the ability under Federal Rule of Civil Procedure 42 to do so. Fed. R. Civ. P. 42(b). At this stage of the case, however, judicial economy is best served by joinder, rather than proceedings in duplicative suits. In fact, Defendants themselves do not object to conducting joint discovery. Therefore, Defendants' motion to sever is denied without prejudice.

III. CONCLUSION

For the above reasons, Defendants' motion to dismiss (doc. 29) is **GRANTED IN PART AND DENIED IN PART.** Further, Defendant Justin Washington's motions to dismiss (doc. 38, 58) are **GRANTED.** Plaintiff Christopher Varner's claims are **DISMISSED WITH PREJUDICE**, while Plaintiffs Eugene Griggs and Cameron Maddox's claims shall proceed. The Clerk is to **TERMINATE** Defendants Antonio Binns, Justin Washington, Lenon Butler, Rodgerick Nabors, Julian Greenaway, John Doe, Jerry Beard, Scott Wilkes, and Stan Shepard from the case. The Clerk is further **DIRECTED** to add

Ahmed Holt, in his official capacity as Assistant Regional Director, Georgia Department of Corrections, and Edward Philbin, in his official capacity as Warden, Augusta State Medical Prison. Also, as stated above, Defendants' motion to sever (doc. 33) is **DENIED WITHOUT PREJUDICE.**

***12** Finally, the stay of discovery in the case is **LIFTED.** Pursuant to this Court's Order of December 4, 2017 (doc. 43), the parties shall confer and submit a Rule 26(f) Report, with proposed case deadlines, within seven days.

ORDER ENTERED at Augusta, Georgia, this 24th day of October, 2018.

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United States District Court, S.D. Georgia, Augusta Division.

Eugene GRIGGS; Cameron Maddox; and Christopher Varner, Plaintiffs,
v.
Ahmed HOLT, in his official capacity as Assistant Regional Director, Georgia Department of Corrections; Edward Philbin, in his official capacity as Warden, Augusta State Medical Prison; Stan Shepard, in his individual capacity; Verneal Evans, Antonio Binns, Justin Washington, Lenon Butler, Rodgerick Nabors, Julian Greenaway, and Jerry Beard, Former Correctional Officers, Augusta State Medical Prison, in their individual capacities; Trei Bluitt, Janson Creagor, and John Doe, Correctional Officers, Augusta State Medical Prison, in their individual capacities, Defendants.

CV 117-089
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Signed 04/29/2019

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ORDER

J. RANDAL HALL, CHIEF JUDGE

***1** Before the Court is Plaintiffs' motion for entry of final judgment under Federal Rule of Civil Procedure 54(b). (Doc. 102.) Plaintiffs request certification of the Court's October 24, 2018 Order dismissing Plaintiff Christopher Varner's excessive force claims for failure to exhaust administrative remedies. For the reasons set forth below, Plaintiffs' motion is **GRANTED.**

I. BACKGROUND

This case concerns three Plaintiffs' joint challenge to the use of excessive force at Augusta State Medical Prison ("ASMP"). Each Plaintiff's individual excessive force claim is based on different incidents at ASMP involving different Defendants. (See Am. Compl., Doc. 7, ¶¶ 138-50.) Nevertheless, Plaintiffs joined their claims in a single suit to address ASMP's "pervasive and longstanding practice" of using excessive force on inmates with mental illness. (See id. ¶ 1.)

On October 24, 2018, the Court entered an Order granting Defendants'[1] motions to dismiss Plaintiff Christopher Varner's excessive force claims for failure to exhaust administrative remedies under the Prison Litigation Reform Act ("PLRA"). (Doc. 78, at 10-21.) Varner's claims were dismissed with prejudice, but Plaintiffs Eugene Griggs and Cameron Maddox's excessive force and prospective relief claims[2] were allowed to proceed. (Id. at 21-26.) Varner was the only Plaintiff against whom Defendants raised an exhaustion defense.

[1] Here, the Court refers to the Defendants that Varner alleges violated his constitutional rights, which includes Antonio Binns, Justin Washington, Lenon Butler, Rodgerick Nabors, Julian Greenway, John Doe, Stan Stephard in his individual capacity, and Jerry Beard in his individual capacity. (Am. Compl., ¶¶ 143, 151-59.)

[2] Plaintiffs have since voluntarily dismissed their claims for prospective relief. (Order of Mar. 6, 2019, Doc. 113.)

Currently, Maddox and Griggs are litigating their claims in this Court with discovery set to end on June 7, 2019, and dispositive motions due by July 8, 2019. (Order of Mar. 12, 2019, Doc. 115.) Plaintiffs filed a motion for entry of final judgment under Rule 54(b) so Varner can appeal the Court's October 24th Order dismissing his claims for failure to exhaust without waiting for Maddox and Griggs to resolve their own excessive force claims.

II. LEGAL STANDARD

Generally, to file an appeal, there must be a final judgment adjudicating the rights and liabilities of all parties on all claims. Ebrahimi v. City of Huntsville Bd. of Educ., 114 F.3d 162, 165 (11th Cir. 1997). Federal Rule of Civil Procedure 54(b) provides an exception to that rule by allowing the district court to certify a final judgment on fewer than all claims or parties. Id.; see also Lloyd Noland Found., Inc. v. Tenet Health Care Corp., 483 F.3d 773, 777 (11th Cir. 2007).

The Supreme Court and the Eleventh Circuit have counseled district courts to exercise their discretion under Rule 54(b) "conservatively"; limiting the rule's application to "the unusual case in which the costs and risks of multiplying the number of proceedings and of overcrowding the appellate docket are outbalanced by pressing needs of the litigants for an early and separate judgment as to some claims or parties." Ebrahimi, 114 F.3d at 166 (quoting Morrison-Knudsen Co. v. Archer, 655 F.2d 962, 965 (9th Cir. 1981)); see also Curtiss-Wright Corp. v. Gen. Elec. Co., 446 U.S. 1, 10, 100 S.Ct. 1460, 64 L.Ed.2d 1 (1980).

***2** To enter a final partial judgment under Rule 54(b), district courts employ a two-step analysis. First, the court must decide whether its judgment is, in fact, both "final" and a "judgment." Curtiss-Wright Corp., 446 U.S. at 7, 100 S.Ct. 1460. "It must be a judgment in the sense that it is a decision upon a cognizable claim for relief, and it must be final in the sense that it is 'an ultimate disposition of an individual claim entered in the course of a multiple claims action.' " Id. (quoting Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 436, 76 S.Ct. 895, 100 L.Ed. 1297 (1956)).

Second, the district court must determine that "there is no 'just reason for delay' in certifying [the judgment] as final and immediately appealable." Lloyd Nolan Found., Inc., 483 F.3d at 777 (quoting Curtiss-Wright Corp., 446 U.S. at 8, 100 S.Ct. 1460). Here, the district court balances judicial administrative interests with the relative equitable concerns. Ebrahimi, 114 F.3d at 165-66. Consideration of judicial administrative interests is necessary to "preserve[ ] the historic federal policy against piecemeal appeals." Id. at 166 (quoting Sears, 351 U.S. at 438, 76 S.Ct. 895). In a similar way, analyzing the relevant equities ensures Rule 54 (b) certification is limited to situations where immediate appeal is necessary to alleviate some danger of hardship or injustice associated with delay. Id.

The Supreme Court has declined to "fix or sanction narrow guidelines for the district courts to follow" under the second prong. Curtiss-Wright Corp., 446 U.S. at 10-11, 100 S.Ct. 1460. Nevertheless, courts analyzing judicial administrative interests should consider factors including "whether the claims under review were separable from the others remaining to be adjudicated and whether the nature of the claims already determined was such that no appellate court would have to decide the same issues more than once even if there were subsequent appeals." Id. at 8, 100 S.Ct. 1460. Further, with respect to the equities involved, district courts enjoy a greater degree of deference because the district court "is 'the one most likely to be familiar with the case and with any justifiable reasons for delay.' " See id. at 10, 100 S.Ct. 1460 (quoting Sears, 351 U.S. at 437, 76 S.Ct. 895).

III. DISCUSSION

Defendants do not contest that the Court's October 24th Order dismissing Varner's claims for failure to exhaust administrative remedies was a final judgment for the purposes of Rule 54(b). The parties only dispute the second prong – whether there is no just reason for delay in certifying the judgment for appeal.

To analyze the second prong, the Court first considers the judicial administrative interests, specifically focusing on the "interrelationship" between Varner's dismissed claim and the other Plaintiffs' claims. See Curtiss-Wright Corp., 446 U.S. at 9, 100 S.Ct. 1460. Varner's adjudicated claim is easily separable from the other Plaintiffs' unadjudicated claims because they involve different incidents, different defendants, and different procedural issues. The interrelationship between the claims extends only to the name of the cause of action – excessive force – and the location of the events – ASMP. Moreover, the only issue that Varner seeks review on is whether he exhausted his administrative remedies as required by the PLRA. This issue raises factual and legal questions that are entirely distinct from the other Plaintiffs' claims,[3] and largely distinct from the underlying merits of Varner's own claim. See D&M Carriers LLC v. M/V Thor Spirit, 586 F. App'x 564, 568 (11th Cir. 2014) (finding no just reason to delay hearing the appeal where the claim under review "does not depend on the resolution of any claims" between the plaintiff and the remaining defendant).

[3] Defendants never raised an exhaustion defense with respect to Griggs and Maddox's claims.

***3** Further, the reviewing court would not have to decide the issue of exhaustion more than once, even if there are subsequent appeals. Exhaustion is a procedural question that has little bearing on the underlying factual issues of Varner's claim, such as liability. Cf. Fed. Home Loan Bank of Bos. v. Moody's Corp., 821 F.3d 102, 107 n.3 (1st Cir. 2016) (affirming no just reason for delay where "the entry of judgment against [the defendant] rests on purely legal grounds distinct from the factual questions of liability being litigated by the remaining parties"), abrogated on other grounds by, Lightfoot v. Cendant Mortg. Corp., 580 U.S. ——, 137 S.Ct. 553, 196 L.Ed.2d 493 (2017). On appeal, Varner may prevail and continue to litigate his claims on the merits or the Eleventh Circuit will affirm this Court's exhaustion ruling and Varner's claims will remain barred. Either way, the exhaustion issue will not arise twice.

Moreover, the issue Varner seeks to appeal involves specific facts, such as grievances filed and the availability of the grievance procedure, which are only relevant to the discrete issue of exhaustion. Thus, an appeals panel would not be required to learn the same set of facts twice. In total, Varner's claims under review are separable from the other Plaintiffs' unadjudicated claims and would not require any duplicative efforts by a reviewing court.

Finally, Plaintiffs' brief cites several out-of-circuit cases that certify a final judgment on claims dismissed for failure to exhaust administrative remedies under the PLRA, see, e.g. Pippin v. Blechl, 2005 WL 2716505, at *2 (W.D. Wis. Oct. 19, 2005); Henrius v. Cty. Of Nassau, 2016 WL 1296215, at *17 (E.D.N.Y. Mar. 31, 2016); Orr v. Hernandez, 2011 WL 4458776, at *12 (E.D. Cal. Sept. 23, 2011), and cases that certify a final judgment on claims dismissed for failure to exhaust administrative remedies under other statutory schemes, see, e.g., Safari Club Int'l v. Jewell, 2015 WL 13651266, at *3-4 (D.D.C. Apr. 10, 2015) (Administrative Procedures Act); Doe v. United States, 106 Fed.Cl. 118, 128 n.8 (Fed. Cl. 2012) (Conservation Security Program); Ronga v. N.Y. City Dep't of Educ., 2011 WL 1327026, at *6 (S.D.N.Y. Mar. 31, 2011) (Title VII). These cases confirm that district courts routinely certify final judgments on the issue of exhaustion of administrative remedies because that issue is separable from other unresolved claims.

Next, the Court considers the relative equities. It is first important to note that the Court is granted "substantial deference" to weigh the equities, more so than under the first prong of the Rule 54(b) analysis. See Curtiss-Wright Corp., 446 U.S. at 10, 100 S.Ct. 1460 ("The reviewing court should disturb the trial court's assessment of the equities only if it can say that the judge's conclusion was clearly unreasonable.").

Plaintiffs argue the equities favor entry of final judgment for essentially two reasons. First, Varner's excessive force claims are "unusually strong" because three Defendants have already admitted liability and have been criminally prosecuted. (Pls.' Reply Br., Doc. 105, at 9; see also United States of America v. Williams, et al., Case No. 1:16-CR-024 (S.D. Ga. Apr. 7, 2016).) Second, the incident underlying Varner's claim occurred in February 2014, more than five years ago by the date of this Order. Plaintiffs' contend that continued delay will jeopardize Varner's ability to effectively engage in discovery[4] should

his claim eventually be allowed to proceed.

[4] Although three Defendants have admitted liability on Varner's excessive force claim, he named five other Defendants, at least one of which is unknown. (See Am. Compl., ¶¶ 25, 64.)

Defendants advance a different assessment of the equities in this case. They contend that Plaintiffs cannot show any danger or hardship associated with waiting to appeal until all claims have been adjudicated. Further, they counter Plaintiffs' delay argument by pointing out Varner waited three years to file this case and three months to make this motion after the Court entered its October 24th Order. Last, Defendants argue entry of judgment would cause substantial hardship to defense counsel by requiring them to defend an appeal and litigate the unresolved claims simultaneously.

***4** The Court recognizes that despite his failure to exhaust administrative remedies, Varner brings an otherwise viable excessive force claim. Varner is currently barred from developing his claim and the viability of an effective discovery process will continue to diminish as time passes. Discovery for the other Plaintiffs is not set to end until June 7, 2019, after which the parties will likely file motions and eventually go to trial. This could delay Varner's ability to appeal for more than a year without Rule 54(b) certification.

While Defendants correctly point out Varner waited three years to file this action, he continued to file untimely grievances regarding the use of excessive force in the interim, at least one of which mentions filing a lawsuit. (See Order of Oct. 24, 2018, at 5-6.) Moreover, Varner suffers from serious mental illnesses and has sustained brain damage, both of which may have affected his ability to diligently pursue his claim. (See Am. Compl., ¶¶ 33-38.)

Finally, Defendants' contention that granting Rule 54(b) certification would impose an undue hardship on defense counsel is unconvincing. Plaintiffs' counsel would be subject to the same demands. Moreover, the need to defend an appeal while continuing to litigate the remaining claims arises in all Rule 54(b) certifications where the defendants share counsel. Simply stated, the equities in this case favor Plaintiffs. By balancing the relative equities with the strong judicial administrative interests discussed above, the Court concludes that there is no just reason to delay certification of the October 24th Order as a final judgment.

IV. CONCLUSION

Based on the foregoing, the Court finds that entry of final judgment under Federal Rule of Civil Procedure 54 (b) is warranted. Accordingly, Plaintiffs' motion for entry of judgment (Doc. 102) is **GRANTED. IT IS THEREFORE ORDERED** that pursuant to Federal Rule of Civil Procedure 54(b), the Clerk is directed to **ENTER JUDGMENT** against Plaintiff Christopher Varner in accordance with the Order of October 24, 2018 (Doc. 78).

ORDER ENTERED at Augusta, Georgia, this 29th day of April, 2019.

All Citations

Not Reported in Fed. Supp., 2019 WL 1903402

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12048-HH

EUGENE GRIGGS
CAMERON MADDOX,

Plaintiffs,

CHRISTOPHER VARNER,

Plaintiff - Appellant,

versus

BELINDA DAVIS, et al.,

Defendants,

STAN SHEPARD
JERRY BEARD
ANTONIO BINNS
JUSTIN WASHINGTON
LENON BUTLER
RODGERICK NABORS
JULIAN GREENAWAY,

Defendants - Appellees.

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

BEFORE: WILSON, JILL PRYOR, and LAGOA, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Christopher Varner is DENIED.

ORD-41

42 U.S.C.A. § 1997e

§ 1997e. Suits by prisoners

Effective: March 7, 2013

Currentness

(a) Applicability of administrative remedies

No 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.

(b) Failure of State to adopt or adhere to administrative grievance procedure

The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action under section 1997a or 1997c of this title.

(c) Dismissal

(1) The court shall on its own motion or on the motion of a party dismiss any action 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 if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

(d) Attorney's fees

(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 1988[1] of this title, such fees shall not be awarded, except to the extent that--

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988[1] of this title; and

(B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of Title 18 for payment of court-appointed counsel.

(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant

pursuant to section 1988[1] of this title.

(e) Limitation on recovery

No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of Title 18).

(f) Hearings

(1) To the extent practicable, in any action brought with respect to prison conditions in Federal court pursuant to section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility, pretrial proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined.

(2) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.

(g) Waiver of reply

(1) Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983 of this title or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

(2) The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.

(h) "Prisoner" defined

As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

CREDIT(S)

(Pub.L. 96-247, § 7, May 23, 1980, 94 Stat. 352; Pub.L. 103-322, Title II, § 20416(a), Sept. 13, 1994, 108 Stat. 1833; Pub.L. 104-134, Title I, § 101[(a)][Title VIII, § 803(d)], Apr. 26, 1996, 110 Stat. 1321, 1321-71; renumbered Title I, Pub.L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub.L. 113-4, Title XI, § 1101(a), Mar. 7, 2013, 127 Stat. 134.)

Footnotes

[1] See Reference in Text note below.

42 U.S.C.A. § 1997e, 42 USCA § 1997e
Current through P.L. 117-80.

End of Document

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Functional Area: Facilities Division	**Reference Number:** IIB05-0001	**Revises Previous Effective Date:** 6/01/03
Subject: Statewide Grievance Procedure	[redacted]	
Authority: Owens / Tillman	**Effective Date:** 12/10/2012	Page 1 of 15

I. POLICY:

It is the policy of the Georgia Department of Corrections to maintain a grievance procedure available to all offenders, which provides an open and meaningful forum for their complaints, the resolution of these complaints, and is subject to clear guidelines.

II. APPLICABILITY:

All offenders committed to the Department of Corrections in state prisons, private prisons, county correctional institutions, and transitional centers.

III. RELATED DIRECTIVES:

A. GDC Rules: 125-2-4-.23

B. GDC SOP's:

1. IIA21-0001 (Prison Rape Elimination Act (PREA)-Sexual Assault of/Sexual Misconduct with Offenders)

2. IIB02-0001 (Inmate Discipline)

3. SOP IIB09-0001 (Administrative Segregation)

4. VH03-0003 (Inmate/ Probationer Health Concerns or Complaints)

C. ACA Standard 3-4271

IV. DEFINITIONS:

A. Emergency Grievance: An unexpected situation involving a significant threat to the health, safety or welfare of an offender that requires prompt action.

B. Calendar day: Calendar Day is considered a 24 hour time period from midnight to midnight Monday through Sunday.

C. Good cause: A legitimate reason involving unusual circumstances that prevented the offender from timely filing a grievance or an appeal. Examples include: serious illness, being housed away from a facility covered by this procedure (such as being out on a court production order or for medical treatment).

D. Offender: Any person confined in any state prison, private prison, county correctional institution and transitional center.

E. Warden: Includes the Superintendent of a Transitional Center

F. Grievance Coordinator: The individual assigned by the warden or superintendent to manage the grievance process at the local facility and serve as the primary point-of-contact.

G. Alternate Grievance Coordinator: The individual assigned by the warden or superintendent to back-up and/or assist the Grievance Coordinator manage the grievance process at the local facility as the secondary point-of-contact.

H. Active Grievance: A grievance that is currently being worked at the local facility level and has not been resolved or appealed to the Commissioner's level.

I. Physical Force Compliance: Allegation of staff use of force that is in alignment with the letter of, the intent of, and the purpose of GDC written policy and procedures.

J. Physical Force Non-Compliance: Allegation of staff use of force that is **NOT** in alignment with the letter of, the intent of and the purpose of GDC written policy and procedures.

K. Sexual Assault: sexual contact or attempted sexual contact between a staff member and an offender, and nonconsensual sexual contact or attempted sexual contact between offenders.

L. Sexual Harassment: Any behavior by staff related to a sexual act with an offender, except sexual assault.

V. ATTACHMENTS:

Attachment 1 - Offender Grievance Form (Includes section for Warden's/Superintendent's Grievance Response; Grievance Resolution Letter)

Attachment 2 - Staff Local Investigative Form

Attachment 3 - Witness Statement Form

Attachment 4 - Warden's Response Form

Attachment 5 - Grievance Appeal to Central Office Form

Attachment 6 - Notification of Warden's/Superintendent's Referral to Internal Investigations of allegations of physical force non-compliance and allegations of sexual assault or sexual misconduct

Attachment 7 - Grievance Rejection Code Form

Attachment 8 - Grievance Resolution/Drop Form

Attachment 9 - Central Office Appeal Response Form

VI. PROCEDURE:

A. General Information:

1. Notice to Offenders. Upon entering the Department of Corrections, each offender must receive an oral explanation of the grievance procedure. The offender must also receive a copy of the Orientation Handbook for Offenders, which includes instructions about the procedure. The offender's receipt of an oral explanation of the grievance procedure and Orientation Handbook will be noted in the inmate's institutional file. Additionally, offenders may access a copy of this policy in its entirety at the facility library.

2. No inmate may be denied access to this procedure.

   a. Grievance Forms must be available in the control rooms of all living units and must be provided upon request by an offender. For offenders in isolation and segregation areas, staff assigned to those areas must provide these Forms upon request by an offender.

   b. Offenders are not prohibited from assisting other offenders from filling out any forms attached to this SOP. However, one offender may not file a grievance on behalf of another offender.

   c. Institutional staff will assist offenders who need special help filling out the grievance forms (*i.e.*, due to language barriers, illiteracy, or physical or mental disability) upon request.

3. Retaliation against an offender for filing a grievance is strictly prohibited. The prohibited retaliation includes, but is not limited to, disciplinary action against the offender for filing a grievance.

4. Informal Dispute Resolution. The Department encourages offenders to try to resolve complaints on an informal basis before filing a grievance. However, an offender is not required to attempt an informal resolution before filing a grievance.

5. The grievance procedure is not intended to circumvent routine administrative processes (*i.e.*, clothing requests, sick call, etc.).

B. Grievances:

1. Grievable Issues. Except as provided below, an offender may file a grievance about any condition, policy, procedure, or action or lack thereof that affects the offender personally.

2. Non-grievable Issues. An offender may not file a grievance about any of the following issues:

   a. Matters that do not affect the offender personally.

   b. Matters over which the Department has no control, including parole decisions, sentences, probation revocations, court decisions, and any matters established by the laws of the state.

   c. Disciplinary actions, including any punishment, fees, or assessments. The disciplinary appeal procedure is located in GDC SOP IIB02-0001 (Inmate Discipline).

   d. Involuntary assignments to administrative segregation. The procedure to appeal such assignment is located in GDC SOP IIB09-0001 (Administrative Segregation).

   e. Co-pay charges assessed for health care. The procedure to appeal such charges is located in GDC SOP VH03-0003 (Inmate/ Probationer Health Concerns or Complaints).

   f. Transfers of offenders between institutions.

   g. Changes to housing assignments, program assignments, or work assignments, unless there is an alleged threat to the offender's health or safety.

3. Notwithstanding the above, an offender may file a grievance alleging retaliation or harassment, regardless of the form of the alleged retaliation or harassment.

4. Sexual Assault/Sexual Harassment:

   a. The Procedure to appeal such charges is located in GDC SOP IIA21-0001 (Prison Rape Elimination Act (PREA)-Sexual Assault of/Sexual Harassment of Offenders)

5. Limit on Number of Active Grievances:

a. An offender is limited to two active grievances.

1) In order for an offender to file a new grievance (more than two active grievances), the offender must drop one of the outstanding active grievances being processed. If the offender does not desire to drop one of the two active grievances then the third grievance will be rejected.

b. The following do not count toward the two (2) active grievance limit and will be processed under the regular procedure:

1) A grievance submitted by the offender as an emergency grievance, and determined by the Grievance Coordinator to be an emergency grievance;

2) A grievance that involves allegations of physical abuse with significant injury to the inmate or sexual assault (See: subsection 9.b); and

3) A grievance that the Grievance Coordinator determines involves an important issue of prison security or administration, such as a serious threat to life, health, or safety of any person.

6. Other Limits on Grievances and Appeals. When an offender includes threats, profanity, insults, or racial slurs that are not a part of the offender's complaint it will be rejected.

7. Range of Remedies. Allowed remedies include all reasonable and effective resolutions, which may range from corrective action by the Warden up to statewide policy changes by the Commissioner. Monetary awards are not allowed, except for missing or damaged property claims.

C. The Grievance procedure has two (2) Steps:

1. Step 1: Original Grievance

2. Step 2: Central Office Appeal

D. Step 1: Original Grievance

1. The offender's complaint and requested relief must be stated legibly and in writing in the space provided on the Grievance Form and on one additional page attached to the Grievance Form. The offender may write on only one side of a page. Any extra pages and any writing on the backside of a page will not be considered.

2. The complaint on the Grievance Form must be a single issue/incident.

3. The offender must sign the Grievance Form and give it to any Counselor. The offender may accomplish this by hand delivery. The recipient must give the offender the receipt, which is the bottom portion of Attachment #1. The Counselor must forward the Grievance Form to the Grievance Coordinator.

4. The offender must submit the Grievance Form no later than 10 calendar days from the date the offender knew, or should have known, of the facts giving rise to the grievance.

5. Screening.

a. The Grievance Coordinator will screen it in order to determine whether to accept it or to recommend that the Warden reject it. The Grievance Coordinator may recommend that the Warden reject the grievance only if it falls into one of the categories listed in subsection b, immediately below.

b. The Warden should reject the grievance if it:

1) Raises a non-grievable issue.

2) Is not filed timely. The Grievance Coordinator may waive the time limit for good cause.

3) Includes threats, profanity, insults, or racial slurs that are not a part of the offender's complaint.

4) The offender already has two active grievances

c. If the Grievance Coordinator determines that the Warden should reject the grievance, the Grievance Coordinator must make that recommendation to the Warden for the Warden's review and decision.

d. If the Warden rejects the grievance, the Warden will send the rejection decision to Grievance Coordinator, who will send it to the offender's Counselor. The Counselor must then give a copy of that decision to the offender and have the offender sign an acknowledgement of receipt.

e. However, even if the Warden rejects the grievance, staff must still act on the information contained in the Grievance Form in accordance with good prison management, if that information concerns the health or safety of any person.

f. The offender may appeal the Warden's rejection decision to Central Office.

g. If the Warden rejects the Grievance Coordinator's recommendation and accepts the grievance, the Warden will send it to the Grievance Coordinator for the grievance to be processed.

6. Processing.

a. Once the Grievance Coordinator accepts the grievance or once the Warden rejects the Grievance Coordinator's recommendation to reject the grievance, then the grievance will be processed.

b. The Grievance Coordinator will appoint an appropriate staff member to investigate the offender's complaint. The staff member will thoroughly investigate the complaint in a manner that is appropriate in the situation. This may include interviewing the offender, interviewing witnesses, taking statements, and obtaining documents.

c. Upon completing the investigation, the staff member must write a complete report, attaching all relevant documentation, and submit it to the Grievance Coordinator. (Refer to Attachment #2) The report must contain:

1) a summary of the facts surrounding offender's complaint;

2) the staff member's conclusions; and

3) a recommendation for resolution.

d. The Grievance Coordinator will then review the staff report and indicates either concurrence or disagreement. The Grievance Coordinator will then submit a recommended response to the Warden.

e. The Warden or Designee will then review the Original Grievance, the staff report, and the recommendation and will then issue a decision. The decision must be in writing and must state the reasons for the decision.

f. The Warden or Designee will send the Grievance decision to Grievance Coordinator, who will send it to the offender's Counselor. The Counselor must then give decision to the offender and have the offender sign an acknowledgement of receipt.

g. The Grievance Coordinator will retain a copy of the Original Grievance and the staff report (including any attachments to the staff report).

h. The offender may appeal the Warden's decision to Central Office.

7. The Warden has 40 calendar days from the date the offender gave the Grievance Form to the Counselor to deliver the decision to the offender. A onetime 10 Calendar day extension may be granted; however, the offender

must be advised, in writing, of the extension prior to the expiration of the original 40 calendar days.

8. Referral to Internal Investigations.

a. At any time before the Warden's Grievance decision is delivered to the offender, the Warden may refer the matter to the Internal Investigations Unit.

If an offender files a grievance involving sexual assault or physical force involving non-compliance with Department policies; such actions automatically end the grievance process. These grievances are automatically forwarded through the Scribe application to Internal Investigation Unit and/or the PREA Coordinator for review and whatever action is deemed appropriate.

b. Once a grievance is referred to Internal Investigations Unit and/or the PREA Coordinator, then this is the final action that will be taken on the Grievance and terminates the grievance procedure.

c. Notice that the grievance was forwarded to Internal Investigations Unit and/or the PREA Coordinator will be generated through the Scribe grievance application. That letter must be handed to the offender and the offender must sign a copy, which will then be placed in the local file. The offender will be provided with a copy of this signed letter.

d. The offender may not file a Central Office Appeal from the Warden's decision to refer the matter to Internal Investigations.

E. Step 2: Central Office Appeal

1. The offender may file a Central Office Appeal only after:

a. the offender receives the Grievance Coordinator's rejection of the Original Grievance

b. the offender receives the Warden's decision on the Original Grievance; or

c. the time allowed for the Warden's decision to be given to the offender has expired.

2. The offender has 7 calendar days from the date he/she receives the response to the Original Grievance (including a rejection as untimely) to file a Central Office Appeal. The Grievance Coordinator or Central Office staff may waive this time limit for good cause.

3. If the offender's Original Grievance was rejected, the offender may file a Central Office Appeal. If the Commissioner or the Commissioner's designee determines that the Original Grievance should have been accepted, the Central Office Appeal decision must also address the merits of the offender's Original Grievance.

4. If the time allowed for the original grievance response to be given to the offender has expired and the offender has not received the original grievance response, the offender may file a Central Office Appeal on his/her Grievance. In the alternative, the offender may wait until he/she receives the original grievance decision to file a Central Office Appeal. However, the offender may file only one Central Office Appeal on or for a Grievance.

5. The offender must fill out and sign the Central Office Appeal Form (refer to Attachment #5) and give it to his/her Counselor. The Counselor must sign and date the Central Office Appeal Form and must give the offender the receipt, which is the bottom portion of Attachment #5.

6. The Grievance Coordinator must send the Original Grievance, the Warden's decision, the Central Office Appeal Form, and any supporting documentation to Central Office. However, the Grievance Coordinator does not have to send paper copies of any documents if those documents are available electronically unless the Commissioner's designee specifically requests those documents.

7. The Commissioner or his/her designee has 100 calendar days after receipt of the Grievance Appeal to deliver a decision to the offender.

8. The Commissioner's designee will send the Central Office Appeal decision to the facility Grievance Coordinator. The Grievance Coordinator will promptly give it to a designated staff member for delivery to the offender. That staff member must then promptly give the Central Office Appeal decision to the offender and have the offender sign the form acknowledging that he/she received the response.

F. Emergency Grievances Procedure:

1. Emergency grievances must be immediately referred to the Grievance Coordinator (or Duty Officer if after hours).

2. The Grievance Coordinator/Duty Officer must determine if the Grievance fits the definition of an Emergency Grievance. If it does, the Grievance Coordinator/Duty Officer must immediately take whatever action necessary to protect the health, safety, or welfare of the offender. This information will be documented and the offender must be given a written response to his Emergency Grievance within 5 calendar days.

3. If the Grievance Coordinator/Duty Officer determines that the Grievance does not fit the definition of an Emergency Grievance, it will be returned to the offender. The offender has 7 calendar days from receipt to file it as an Original Grievance.

G. Administration and Record-keeping for the Grievance Procedure:

1. The Commissioner may delegate his/her authority over grievance matters to a designee.

2. Confidentiality of Grievances:

   a. All paper copies of grievances and related documents retained at the institution must be kept in a local working file within the office of the Grievance Coordinator in a locked cabinet. Paper copies of grievance documents retained by Central Office staff must be kept in a separate file. Electronic grievance documents must have similar restricted access. If there is a

scanning process available to the Grievance Coordinator at the local level and/or Commissioner's Designee at the Central Office level Grievance Coordinator, once the a decision is made, the local working file may be scanned into a PDF file. This file will be assigned a unique file name following the statewide guidelines and stored in a secured folder, limited access folder on the network.

b. A Grievance must not be placed in the offender's file or referred to in SCRIBE case notes.

c. Grievances may be made available to staff members involved only to the extent necessary for processing the Grievance or for an audit.

3. Grievance Coordinator. The Warden of each facility must appoint a Grievance Coordinator. An Alternate Grievance Coordinator should be named to serve as a back-up to the Grievance Coordinator. Facilities Operations will maintain a list of all Grievance Coordinators and will provide a copy to Inmate Affairs.

4. Grievance Coordinator Duties:

a. Ensure compliance with the Grievance SOP;

b. Maintain the SCRIBE records on grievances;

c. Retain all records and documentation relevant to grievances as provided by this policy;

d. Coordinate the timely investigation of grievances.

5. Where a Grievance is filed in reference to a different facility, the Grievance Coordinator at the offender's current facility will retain a copy of the Grievance and will forward the Original Grievance to the Grievance Coordinator at the named facility for processing.

6. Electronic Records. Grievances and related documents may be created and stored electronically (such as if they are scanned into SCRIBE). An electronic record may be used in the same manner as a paper record.

7. A copy of the Central Office Appeal decision and the offender's signed acknowledgement will be kept in the grievance file. All attachments, statements and related documents will be retained in the Central Office file. If these records are stored electronically, the paper copies do not need to be retained.

8. Employee Training. Department employees who process grievances (such as Counselors and Grievance Coordinators) and who are employed at any facilities covered by this SOP will be required to attend training and read the grievance procedure. The training officer will document this annually.

9. Deadlines and time calculation. If the final day of a deadline falls on a day that is not a calendar day and that does not corresponds with a Grievance Coordinator's and/or Alternate Grievance Coordinator's work schedule, then the deadline expires on the next calendar day that does.

H. Evaluation of the Grievance Procedure:

1. The Office of Investigations and Compliance (OIC) Audits Unit must audit the grievance process at least once every 12 months.

2. OIC must conduct an evaluation of the grievance procedure at least once every 12 months.

3. The Operations, Planning, and Training (OPT) Division Planning & Analysis Unit will generate semi-annual reports regarding the number and type of grievances filed and will present those reports to the Commissioner, the Director of Facilities Operations, and the General Counsel of the Department.

VII. RETENTION SCHEDULE:

All Grievance related documents will be retained in the Grievance Coordinator's and/or the Commissioner's designee's file for 4 years after the final disposition of the grievance and then destroyed.

Nathan Deal
Governor

GEORGIA DEPARTMENT OF CORRECTIONS

COMMISSIONER'S OFFICE

State Office South at Tift College

Brian Owens
Commissioner

DATE:

TO: **Offender Name, GDC #**
_____ STATE PRISON

FROM: **Warden/Superintendent**
_____ STATE PRISON

RE: **FORMAL, # , Date**

This memorandum is in response to your grievance that was filed on Upon review, it has been determined that due to the nature of the allegation, a request for a formal investigation is warranted.

Therefore, your grievance has been forwarded to the Georgia Department of Corrections Internal Investigations Unit on for review. That Unit will determine what action is appropriate. As a result, this letter serves as the formal response to your grievance and effectively closes your grievance. The decision to forward your grievance to the Internal Investigation Unit and close your grievance is not appealable.

Offender Name, GDC #

Warden/Superintendent

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

EUGENE GRIGGS, *et al.*,	)	
	)	
Plaintiffs;	)	
	)	CIVIL ACTION FILE NO.:
vs.	)	
	)	1:17-CV-89-JRH-BKE
STAN SHEPARD, *et al.*	)	
	)	
Defendants.	)	

AFFIDAVIT OF SHAREKA BROWMAN

Personally appeared before me, the undersigned officer duly authorized to administer oaths in and for the State of Georgia, Shareka Browman, who, after being duly sworn, deposes and states the following:

1. My name is Shareka Browman and I am competent in all respects to testify to the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true and give this affidavit freely and for use as evidence in the above-styled case.

2. I am employed by the Georgia Department of Corrections as Chief Counselor / Grievance Coordinator at Augusta State Medical Prison ("ASMP"). My responsibilities include: ensuring compliance with the Grievance SOP, as described below; coordinating the timely investigation and response to inmate grievances; and maintaining information and records regarding inmate grievances.

3. Attached hereto as **Attachment A** is a true and correct copy of the Georgia Department of Corrections Standard Operating Procedure IIB05-0001, Statewide Grievance Procedure, effective December 10, 2012, and which was in place on February 13, 2014 (the Grievance SOP). The Grievance SOP outlines the grievance process that was applicable to and utilized for inmates committed to the Department of Corrections, including inmates at ASMP. I am familiar with the Grievance SOP and the practices of the Department of Corrections as to inmate grievances under that document.

4. As reflected in the Grievance SOP, inmates are provided an oral explanation of the grievance process upon entering the custody of the Department of Corrections. Inmates are provided a copy of the Orientation Handbook for Offenders, which includes instructions on the grievance procedure. Inmates also have access to a copy of the Grievance SOP at the facility or center library.

5. With the exception of certain matters that are designated in the Grievance SOP as "Non-Grievable Issues," the Grievance SOP in place in February 2014 was applicable to "any condition, policy, procedure, or action or lack thereof that affects the offender personally."

6. Under the Grievance SOP, there was one step in the grievance process for a grievance claiming a use of physical force involving non-compliance with

Department policies. That step required an inmate to submit a completed Grievance Form which was included as Attachment 1 to the Grievance SOP.

7. The submission of a grievance alleging a use of physical force involving non-compliance with Department policies automatically ended the grievance process. This type of grievance was automatically forwarded to Internal Investigations Unit for review. The referral of a grievance to the Internal Investigations Unit was a final action that would be taken on the grievance and terminated the grievance process.

8. Under the Grievance SOP, an inmate grievance is, and was, logged into a central database and assigned a control number at or near the time that the grievance is received. A Grievance History can be printed from the database showing all grievances filed by an inmate during his incarceration, including grievances from all facilities where the inmate has been incarcerated. Attached hereto as **Attachment B** is a true and correct copy of the Grievance History for inmate Christopher Varner, GDC No. 1166153, showing that he filed no grievances regarding an alleged use of force on February 13, 2014.

9. While inmate Varner filed grievances on March 12, 2014, they involved medical treatment. **(See Attachment C and Attachment D)**.

10. A review of the Grievance History for inmate Varner shows that he never filed a grievance related to a use of force incident that allegedly occurred on February 13, 2014.

11. I am familiar with the information and records maintained by the Department of Corrections under the Grievance SOP. The records referenced herein and attached hereto are made at or near the time of the information reflected therein by a person with knowledge of the information, they are kept in the regular course of business, and it is the regular practice of the Department of Corrections to make and maintain such records.

This 16th day of November, 2017.

SHAREKA BROWMAN

Sworn to and subscribed before

me this 20th day of November, 2017.

NOTARY PUBLIC

TAMMY STROUP NOTARY PUBLIC Comm. Exp. 1/16/18 McDUFFIE COUNTY, GA

Ombudsman and Inmate Affairs

Ombudsman and Inmate Affairs Unit

For questions and/or concerns regarding a loved one within our system, please call us at 478-992-5358.

The mission of the Ombudsman and Inmate Affairs Unit is to promote fairness, accountability and integrity by investigating public and offender grievances, appeals, and inquiries regarding unfair practices and non-compliance of policy. They accomplish that task by investigating allegations of violations of GDC policies and procedures, monitoring problems in the correctional system in a fair and consistent manner and addressing offender and general public concerns in an unbiased, impartial, and courteous manner. Ombudsman and Inmate Affairs Unit Brochure (/sites/all/files/pdf/ombudsmanBrochure.pdf)

Frequently Asked Questions

- **How can I get my loved one moved to a prison closer to home?**
- **Who can I speak to regarding my desire to get an early release (parole, reprieve) for my loved one? My loved one's TPM (tentative parole month) has changed a couple times, why?**
- **My loved one's time is not computed correctly, what can he/she do? My loved one should have received credit for time served in the county jail but did not; what can he or she do about this?**
- **Who do I contact if my loved one is not receiving the proper medical treatment in prison?**
- **How can I find an inmate's location, release date, or charges?**
- **How do I contact an inmate?**
- **What if an inmate has concerns that are not being addressed?**
- **My loved one wrongfully received a DR (disciplinary report); what can be done about this? My loved one rightfully received a DR but I feel that his/her punishment is too harsh? How do I get a DR expunged?**
- **Who do I contact regarding my loved one being assaulted?**
- **Why was my visitation denied or revoked?**
- **I contacted the Ombudsman Unit and I was told the same thing that I've already heard from the Warden. Isn't the Ombudsman Unit supposed to fight on behalf of inmates and their families?**
- **How do I contact the Ombudsman Unit?**

Answers

Q. How can I get my loved one moved to a prison closer to home?

A. Our policy states that a routine transfer shall not be considered until an inmate has been assigned to an institution for twelve (12) months with no Disciplinary Reports during the preceding six (6) months. Once the inmate is eligible for a transfer he/she must speak with his/her counselor regarding his/her desire to transfer. Please be mindful that an inmate may be eligible to submit a transfer request; however, this does not guarantee transfer approval.

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Q. Who can I speak to regarding my desire to get an early release (parole, reprieve) for my loved one? My loved one's TPM (tentative parole month) has changed a couple times, why?

A. These are all parole related concerns and GDC, the Ombudsman unit more specifically, has no jurisdiction over these matters. You may contact parole at: Clemency_Information@pap.state.ga.us (mailto:Clemency_Information@pap.state.ga.us) or 404-656-5651

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Q. My loved one's time is not computed correctly, what can he/she do? My loved one should have received credit for time served in the county jail but did not; what can he or she do about this?

A. The inmate may speak to his/her counselor regarding the computations error. If the matter is still unresolved the inmate may file a grievance. *Please note that this issue may require you contacting the clerk of court in the county of conviction as well.

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Q. Who do I contact if my loved one is not receiving the proper medical treatment in prison?

A. While you may contact the following people on your loved one's behalf; we ask that you encourage your loved one to utilize the inmate grievance process. Please attempt to contact the following staff in this order: inmate's counselor, chief counselor, Deputy Warden of Care & Treatment, Warden, Regional Director, and then, Ombudsman staff.

*** Please be advised that due to HIPAA privacy laws the Ombudsman unit cannot provide you with medical information in reference to your loved one without a signed medical release of information form.**

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Q. How can I find an inmate's location, release date, or charges?

A. From GDC's home page, click on the Find an Offender (http://167.195.96.197/GDC/Offender/Query) tab and enter as much info. that you have available.

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Q. How can I contact an inmate?

A. Inmates may be contacted via mail. Click on the link on the top of the page entitled Find a Facility (http://167.195.96.197/GDC/Facility/FacilityMap). There you will be able to search for the facility that your loved one is housed at as well as retrieve their address. Please be sure that your loved one's name and GDC number is listed on the envelope.

Q. What if an inmate has concerns that are not being addressed?

A. Encourage your loved one to attempt to handle it at the facility level first by filing a grievance and/or attempt to contact the following staff in this order: inmate's Counselor, Chief Counselor, Deputy Warden of Care & Treatment, Warden, and then, Ombudsman staff. Inmates may write to the Ombudsman staff. We prefer that the inmate utilizes the inmate grievance process first; however, we do understand that there are some issues that require immediate attention.

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Q. My loved one wrongfully received a DR (disciplinary report); what can be done about this? My loved one rightfully received a DR but I feel that his/her punishment is too harsh? How do I get a DR expunged?

A. If an inmate is found guilty of a disciplinary infraction he or she will be given the opportunity to appeal the disciplinary report through the Disciplinary Appeal process.

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Q. Who do I contact regarding my loved one being assaulted?

A. The inmate should immediately report any assaults (sexual/physical) to the counselor, Deputy Warden, and/or Warden and allow them to take appropriate action. However, family members may contact one of the above staff and or Ombudsman.

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Q. Why was my visitation denied or revoked?

A. The Georgia Department of Corrections has the right to refuse visitation to anyone who is suspected of, caught on the premises with, and/or attempts to introduce contraband into the facility. In addition, if you are found to be deceptive on the significant other form or repeatedly warned about a particular action your visitation can be denied and/or revoked. GDC may also suspend visitation privileges to meet special security needs of the facility. The Ombudsman unit does not have the authority to overturn the Warden's decision in this matter.

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Q. I contacted the Ombudsman Unit and I was told the same thing that I've already heard from the Warden. Isn't the Ombudsman Unit supposed to fight on behalf of inmates and their families?

A. The Ombudsman Unit was created by the Georgia Department of Corrections (GDC) to act as a bridge between the concerned citizens and GDC by gathering information that potentially uncovers and reduces problems within the corrections system thus ensuring the rights and safety of offenders are protected.

It is the goal of the Ombudsman unit to be impartial, to provide an objective view, and resolve issues by utilizing fair, consistent, and respectful practices which are outlined by policies, procedures, and laws. If the facility is acting within policy the Ombudsman unit does not have the authority to direct them to do otherwise. However, if we look into a concern and it is revealed that there is room for improvement the appropriate GDC staff will be notified.

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Q. How do I contact the Ombudsman Unit?

A. You may contact the Ombudsman Unit at **478-992-5358** or Ombudsman@g (mailto:Ombudsman@dcor.state.ga.us)dc.ga.gov (mailto:Ombudsman@gdc.ga.gov)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

EUGENE GRIGGS, *et al.*,	)	
Plaintiffs,	)	CIVIL ACTION
v.	)	NO. 1:17-CV-89-JRH-BKE
STAN SHEPARD, *et al.*,	)	
Defendants.	)	

DECLARATION OF THOMAS STARKEY

I, Thomas Starkey, being competent to make this declaration and having personal knowledge of the matters stated herein, declare under penalty of perjury that the following is true and correct:

1. I am over 21 years of age. The statements contained in this declaration are based on my personal knowledge and are true and correct. I am aware that they will be used in a court of law.

2. I currently reside in Fairburn, Georgia. After graduating from high school, I worked for over 30 years repairing automobiles.

3. I am the father of Christopher Varner. Chris was born in Illinois and spent his early childhood there and in Wisconsin. When he was around ten years old, he moved to Georgia to live with me. He has lived in Georgia ever since.

4. I raised Chris as a single parent throughout his teenage years.

5. Ever since he was a child, Chris has had serious mental issues. I am not a doctor and do not understand all of Chris's problems. I know that as Chris got older, I and others in our family realized that something was wrong with him. He had and continues to have a hard time understanding and communicating.

6. Chris had several head injuries as a child. When Chris was around six years old, his mother told me that he had recently been injured by a television set falling on his head. When Chris was sixteen years old, he was jumped on by older men and spent a week to ten days at Grady Memorial Hospital in Atlanta, receiving treatment for a head injury.

7. Chris had behavioral issues and was in and out of juvenile detention and prison as a teenager and young adult. In 2012, he went to prison to serve his current sentence.

8. One day several years ago, while Chris was assigned to a prison in Augusta, Georgia, I received a telephone call from a prisoner telling me to come see Chris right away because he had been jumped on by guards and was all broken up. The prisoner I spoke with said that the beating had occurred that day.

9. I called a prison administrator at the Augusta prison on the same day that I was informed about the beating. I believe that I spoke to the warden. I said that I was under the impression that my son had been badly injured, and that if

what I had heard was true I would take legal action. I also said that I was going to come and visit Chris at the prison to see his condition for myself. When I called a short time later to arrange a visit, I learned that Chris had been moved from the prison in Augusta to the diagnostic prison in Jackson, Georgia.

10. I visited Chris while he was held at the diagnostic prison in Jackson. He was not held in the main prison, but in a separate compound to the side of the main prison. The visit with Chris took place inside a booth with a sealed glass window separating him from me.

11. When I visited Chris at the Jackson prison, he was in the worst shape that I had ever seen him. His prison uniform was ripped in places, as if a wildcat had gotten ahold of him. He was slobbering. He had not shaved or had a haircut in some time, and he had lost a lot of weight. He stood there staring at me through the glass. I said, "Relax. Sit down, son." He continued to stand there in the same place, staring at me without speaking.

12. After being with Chris for a short time and seeing how he was responding to me, I left the visitation booth and found a guard. I told the guard that Chris needed to be in a hospital, and I asked to see the warden. A supervisor came out and introduced himself, but he was not the warden, so I repeated my request to see the warden. Eventually someone else arrived and identified himself as someone representing the warden, because it was a Saturday and the warden

was unavailable. I said that Chris was not stable and that he needed to be in a hospital where he could be watched 24 hours a day. I asked why the officers would let Chris come out to meet me looking like he did and in the condition he was in. The warden's representative instructed me to leave and not return.

13. Chris has not been the same since the beating incident at the Augusta prison. His thought process seems more irrational, and his behavior has gotten worse. I do not know whether it was the experience of being so severely beaten that caused this, or whether it was some kind of physical injury to his brain during the beating, but his condition has deteriorated to the point that I believe he should be in a hospital.

I swear under penalty of perjury that the information given herein is true and correct, and I understand that a false answer to any item may result in a charge of false swearing.

Sworn by me this 14 day of January, 2018.

Thomas Starkey