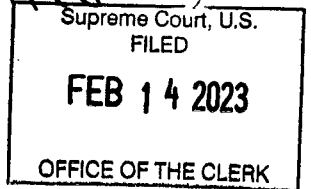


No. 1
USCA11 No. 22-12195

ORIGINAL

In THE **22-7535**

Supreme Court of the United States
Washington, D.C.



Delroy T. Booth

Petitioner

v.

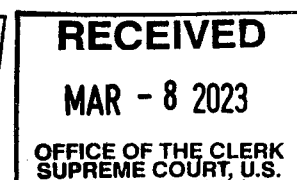
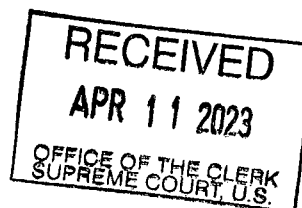
Lt. R. Allen
Sgt. J. Smith

Respondent(s)

On Petition For Writ of Certiorari
To The United States Court of Appeals For Eleventh Circuit
United States District Court For the Northern District of
Georgia (Rome Division)

Petition For Writ of Certiorari

Delroy T. Booth Pro Se
Johnson State Prison



QUESTIONS PRESENTED

Page 1 of 2 Pages

1. Did the District Court err by sua sponte dismissing Petitioner Booth's claims for Punitive Damages Before a Responsive Pleading was Filed By the Defendants?
2. Is Judicial Notice of the content and Applicability of a grievance Procedure improper at the screening stage?
3. Does Petitioner Booth's Complaint, exhibits, and objections demonstrate that administrative Remedies may not have been available to him such that his Failure to exhaust would be excused?
4. Is Petitioner Booth's claims for mental and Emotional Injuries for Punitive Damages considered to be Frivolous as to Warrant dismissal at the screening stage of the 1983 civil Action?
5. Is Failure to exhaust administrative Remedies considered to be an affirmative defense raised by the Defendants?
6. Does a Transfer from one Prison to the next Prison impact Petitioner Booth's Punitive Damages claims for mental and Emotional Injuries with a Prior showing of a Physical Injury?
7. Petitioner Booth challenges the dismissal from the Eleventh Circuit Court of Appeals, Does that Court Accept as True Petitioner Booth's version of events and construe those events in the light most favorable to Petitioner?
8. Does the United States Supreme Court have an Instruction that Initial Assessment of the Informa Pauperis Plaintiff's Factual Allegations has to be weighted in favor of the Plaintiff?

9. When Exhaustion of administrative Remedies is not Demonstrated on the Face of the Complaint, Do courts have to Refrain From engaging in a Fact Finding process to establish it?
10. Does the Eleventh Circuit Court of Appeals have Authorization to Review a district court's decision to take Judicial notice under an Abuse of discretion Standard?
11. The Frivolousness determination is a Discretionary one, Is a Dismissal under 28 U.S.C. 1915(d) properly Reviewed For an abuse of discretion?
12. Did the Eleventh circuit court of Appeals err by Affirming the Decision of the District Court's Decision of Failure to exhaust Administrative Remedies, Frivolous, etc. without hearing a Responsive Pleading Filed By the Defendants?
13. Did the Eleventh Circuit Court of Appeals err by not establishing a two step process For Resolving Motions to dismiss Prisoner lawsuits For Failure to exhaust administrative Remedies?
14. Does Prisoner's have Rights to File 1983 lawsuits For Punitive Damages For mental and Emotional injuries with a Prior Physical Injury in a Prior 1983 civil Action lawsuit?

List of Parties and Related Cases

1. Lt. R. Allen - Respondent
2. Delroy T. Booth - Petitioner
3. Sgt. T. Smith - Respondent

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Jurisdiction

Petitioner Delroy T. Booth, an incarcerated individual, initiated this action pursuant to 42 U.S.C. 1983 alleging violations of his constitutional rights under the United States Constitution. The United States District Court for the Northern District of Georgia had Jurisdiction under 28 U.S.C. 1331. Pursuant to 28 U.S.C. 1291 the United States Court of Appeals for the Eleventh Circuit has Jurisdiction to hear Petitioner Booth's Appeal.

Constitutional and Statutory Provisions Involved

Statutes -

28 U.S.C. 1291

28 U.S.C. 1331

28 U.S.C. 1915(A)

42 U.S.C. 1983

42 U.S.C. 1997e(e)

STATEMENT OF THE CASE * Page 1 of 18 Pages *

For the Record, Petitioner Booth would like to Address Reasons why This Petition For Writ of Certiorari is arriving late to the office of the Clerk and Supreme Court of the United States. The Eleventh Circuit Court of Appeals Affirmed the Decision of the District Court on 12/27/2022. Petitioner Booth Received and signed the Prison legal Mail log Book on 2/8/2023. Exactly 43 Days later From when the Eleventh Circuit Court of Appeals Affirmed. Petitioner Booth has Been living in the Administration Segregation "Lockdown" Dorm for almost 7 years now, and I have no control of Trying to get my legal Mail once it comes to the Prison. Today is February 14, 2023 The First Day I started on this Petition For Writ of Cert. Again, Petitioner Booth is not at Fault For the Petition For Writ of Cert. Arriving late to the office of the Clerk and Supreme Court of the United States. * Let's Begin with the Petition For Writ of Certiorari: oral argument is warranted in this Case Because it raises important legal issues Regarding the Scope of the Initial Screening For exhaustion of administrative remedies under the Prison Litigation Reform Act (P.L.R.A.). This case/Petition also Presents a significant question regarding the Scope of Judicial notice of Prison grievance Procedures at the Screening Review Stage. Also How the P.L.R.A. has Sections in the "Act" where Prisoners can sue For Punitive Damages For mental and emotional Injuries, and how the Prisoner must First Show a Prior showing of a Physical Injury. Statement of Issues: Whether a district court may dismiss an inmate's Pro se Complaint For Failure to exhaust administrative Remedies, An affirmative Defense, Before a responsive Pleading is Filed without Considering

Whether administrative Remedies were available. Whether a District court may dismiss a Plaintiff's claim of spraying a Chemical Agent without Provocation, Preparing False Disciplinary Reports, deliberate Indifference to serious medical need as Frivolous, Failure to state a claim, etc. Whether the United States Court of Appeals for the Eleventh Circuit established a two step process for resolving motions to dismiss Prisoner's lawsuits for failure to exhaust administrative Remedies.

* Because Petitioner Booth challenges the dismissal from the District court and the United States Court of Appeals for the Eleventh Circuit, those two courts should have accepted as true his version of events and construed those events in the light most favorable to him. See Williams v. Barrow, 559 F. App'x 979, 981 (11th Cir. 2014) (unpublished). This is consistent with the United States Supreme Court instruction that Initial assessment of the in forma pauperis Plaintiff's factual allegations must be weighted in favor of the Plaintiff. In other words, the 1915(d) Frivolousness determination, frequently made sua sponte before the Defendant has even been asked to file an answer, cannot serve as a fact finding process for the resolution of disputed facts. Denton v. Hernandez, 504 U.S. 25, 32 (1992). Though Denton deals with Frivolity Review, which is discussed in Point II, infra, when exhaustion is not demonstrated on the face of the complaint, courts must refrain from engaging in a fact finding process to establish it. Likewise, because the Frivolousness Determination is a discretionary one, a dismissal under 28 U.S.C. 1915(d) is properly reviewed for an abuse of discretion. Denton, 504 U.S. at 33.* Here, the District court and the United States Court of Appeals for the Eleventh Circuit abused that discretion. The District court concluded that Petitioner Booth failed to exhaust his administrative Remedies, Failure to state a claim, etc. and dismissed his complaint.

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Before any Defendant Filed an Answer. In doing so, the district court Failed to adhere to the usual Pleading Practices that Regard Exhaustion as an affirmative defense to Be Pleaded By the Defendants Rather than a Required Allegation in the complaint. Petitioner Booth's complaint, exhibits, and objections, raise the issue of whether the grievance system was available to him. Further, the District court took Judicial notice of the Department's grievance Procedures, which exceeds the limited role of Judicial notice. District courts must refrain from reaching material Beyond what is presented by the Plaintiff to determine the exhaustion issue. Petitioner Booth's complaint on its Face, does not establish that he Failed to exhaust Administrative Remedies. Petitioner Booth's complaint, exhibits, and objections sufficiently allege that the grievance Procedure was unavailable to him and, therefore, his complaint should not have Been dismissed. See *Ross v. Blake*, 136 S. Ct. 1850, 1855-57, 195 L. Ed. 2d 117 (2016). Here, The District court erred by sua sponte dismissing Petitioner Booth's claims Before a Responsive Pleading was Filed Because Failure to exhaust administrative Remedies is an affirmative Defense and is not Demonstrated on the Face of Petitioner Booth's complaint or exhibits. Undoubtedly, the Prisoner Litigation Reform Act Requires inmates to exhaust Administrative Remedies prior to Filing any action. 42 U.S.C. 1997e(a), *Ross v. Blake*, 136 S. Ct. 1850, 1855-57, 195 L. Ed. 2d 117 (2016). Yet the Court has rejected claims that the PLRA exhaustion Requirement imposes a heightened Pleading standard that Requires inmates to Demonstrate exhaustion in their complaint. Instead, Federal Rules of Civil Procedure 8 Requires only a short, plain statement of the claims. Thus, exhaustion of administrative Remedies is an affirmative Defense that inmates are not Required to

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Specially Plead in their complaints and which must Be raised in a Responsive Pleading. see Jones v. Bock, 549 U.S. 199, 216 (2007), see also Bingham v. Thomas, 654 F.3d 1171, 1175 (11th Cir. 2011). In addition, a Remedy must Be Available Before it Can Be exhausted. Ross, 136 S.Ct. at 1858, see Also Turner v. Burnside, 541 F.3d 1077, 1084 (11th Cir. 2008). Under the Ross Framework, an administrative Remedy is unavailable If (1) it operates as a Simple Dead end - with officers unable or consistently unwilling to provide any relief to Aggrieved inmates, (2) It is so opaque that it becomes, Practically speaking, incapable of use or, (3) Prison administrators thwart inmates from taking advantage of a grievance process through machination, Misrepresentation, or Intimidation. Ross, 136 S.Ct. at 1859-60. Judicial Notice of the content and Applicability of a grievance Procedure is improper at the screening stage: Here, the District Court, via the Recommendation, Appears to have taken Judicial Notice of the grievance Procedure. Notably, many cases involving Judicial notice after a responsive Pleading had Been Filed and many were decided Before Ross v. Blake, Recognized that the mere existence of a grievance Procedure is not enough to demonstrate that the Procedure is available. Of course, Federal Rule of Evidence 201(b) Provides that a Court may Judicially notice a Fact that is not Subject to Reasonable dispute Because it (1) is generally known within the trial Court's territorial Jurisdiction, or (2) can be Accurately and Readily determined From Sources whose accuracy cannot reasonably Be questioned. Judicial notice may Be Sua sponte or at the Request of the Parties and may Be taken at any stage in the proceeding. Fed. R. Evid. 201(c)-(d). If the Court takes Judicial notice Before notifying a Party, on Request, is Still entitled to be heard. Fed. R. Evid. 201(e). Courts should Refrain From taking Judicial notice of Procedures that are Subject to change to determine

exhaustion, Particularly where no responsive Pleading has been filed. Taking notice of the Department's grievance procedure exceeds the limit role of Judicial notice. *Cantwell*, 788 F.3d at 509. where as Here, the complaint does not on its Face demonstrate that Petitioner Booth Failed to Exhaust administrative Remedies and the District Court must Reach material Beyond what is prevented By Petitioner Booth to Determine the issue, Then the order has exceeded the Bounds of the screening process and imposes a Pleading Standard that is not Required By the text of the PLRA. Petitioner Booth's complaint, exhibits, and objections demonstrate that administrative Remedies may not have been available to him such that his Failure to Exhaust would be excused. Here, Petitioner Booth's grievance was not Forwarded and should have been, then the grievance may have been improperly screened. Improper screening may render an administrative Remedy unavailable. See *SAPP v. Kimbrell*, 623 F.3d 813, 828 (9th Cir. 2010) (Holding that administrative Remedies are effectively unavailable - and that the PLRA's exhaustion Requirement is therefore excused where Prison officials improperly screen a Prisoner's grievance or grievances that would have sufficed to exhaust the claim that the Prisoner seeks to pursue in Federal court). But Perhaps More importantly, Petitioner Booth should not have to carry the Burden of establishing that he exhausted his Administrative remedies at the Complaint stage. The general rules of Practice apply to PLRA Complaints. *Jones*, 549 U.S. at 214. A complaint may be dismissed if an affirmative Defense, such as Failure to exhaust, appears on the Face of the Complaint. Otherwise, Exhaustion and other affirmative defenses must be raised in a responsive Pleading. See *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011). The outstanding questions regarding Petitioner Booth's grievance are prime examples of why exhaustion is an affirmative Defense that must be raised By the

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Defendants. The District Court erred By Dismissing Petitioner Booth's Complaint Based on the affirmative Defense of exhaustion Before a Responsive Pleading was Filed when his complaint, exhibits, and his objections reveal that the administrative Process may not have been Available to him For 1997 e (a) Purposes. Petitioner Booth's cruel and unusual Punishment claim, Deliberate indifference to serious medical needs, etc., were not so Frivolous as to Warrant dismissal at the Screening Stage. Petitioner Booth's claims were not so Frivolous as to Warrant Dismissal at the Complaint Stage. District Courts have discretion to Dismiss informae Pauperis complaints that lack an Arguable Basis in law or Fact. Denton, 504 U.S. at 1733. Petitioner Booth's Complaint alleges that he has been refused medical treatment From the spraying of the chemical Agent without Provocation. A Prison's official deliberate Indifference to the serious medical needs of a prisoner constitutes the unnecessary and Wanton infliction of Pain... Proscribed By the Eighth Amendment. See Farrow v. West, 320 F.3d 1235, 1243 (11th Cir. 2003) (quoting Estelle v. Gamble, 429 U.S. 97 (1976)). To succeed, a Plaintiff must Put Forth evidence of an objectively serious medical need and prove that the Prison official acted with an attitude of deliberate indifference to that serious medical need. A Plaintiff need not prove that the Prison official inflicted the medical need on him to succeed on this claim. Therefore, Petitioner Booth's Complaint of a serious medical need, spraying Petitioner Booth with a chemical Agent without Provocation, etc. should not have been Rejected as Frivolous even if the Court Finds some portion of his claims to be Fanciful. The Judicial screening Process must take care not to impose heightened Pleading Requirements For Complaints subject to the PLRA's exhaustion Requirement under the Rubric of a Screening Review. As this Court The United States Supreme Court Has cautioned Judges are To construe the PLRA and not read in by way of creation a Requirement

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That Plaintiff's establish exhaustion. See Jones, 549 U.S. at 216. The Order in this Case read in such a Requirement By dismissing Petitioner Booth's Complaint even though his complaint, exhibits, and objections contained sufficient information that, if taken as true, would demonstrate that administrative Remedies were unavailable to him for 1997 e (a) purposes. Further, taking Judicial notice of material Beyond what is Presented By the Plaintiff to determine the exhaustion issue exceeds the bounds of the Screening process and imposes a Pleading standard that is not Required by the text of the PLRA.

The next part of this Petition For writ of certiorari, Petitioner Booth will demonstrate to this Court how the District Court erred in its order Dated June 17, 2022.

Page 2 of 4 pages states: *Partial copy of order - Before Filing the instant Action, Petitioner again tried to exhaust his administrative Remedies, but he did not receive a Response to his initial grievance, and he Filed the instant action on the same day that he Filed his administrative appeal. The Magistrate Judge thus Recommended that this Action be dismissed Because it clear that Plaintiff has not and can no longer exhaust his Administrative Remedies.*

Here, Petitioner Booth will now demonstrate to the United States Supreme Court what was stated in the Exhaustion of Legal Remedies section in the Civil Action Delroy T. Booth v. Lieutenant R. Allen, et al., (Civil Action No. 4:21-cv-239-AT.)

This is what was stated on the Informal grievance Dated 10-29-2021 and The Formal grievance Appeal Dated 12-13-2021 -

Pursuant to the Prison Litigation Reform Act, 42 U.S.C. 1997e (e), The P.L.R.A. states that 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 a physical injury. Plaintiff Delroy T. Booth is now exhausting his Administrative Remedies Against Defendants Lieutenant R. Allen and Sergeant J. Smith at Hays State Prison. This new lawsuit is in the amount of \$800,000 Dollars For Mental and Emotional Injuries and Pain and Suffering. Plaintiff Delroy T. Booth is writing a grievance complaint on Sgt. J. Smith For using Excessive Force on Plaintiff Booth By spraying Booth with pepper spray, a chemical Agent without provocation. Also how Sgt. J. Smith lied on Disciplinary Report # 706099 when Plaintiff Booth asked him to please take me to medical Because I had an medical Emergency. Plaintiff Booth is also writing a grievance complaint on Lieutenant R. Allen For lying on Disciplinary Report # 706157 stating on the Report Plaintiff Booth "spit" in his Face. That statement Triggered Sgt. Smith to spray Booth with a chemical Agent without Provocation when Booth was Fully secured in a seven by nine cell, steel door, small window and a food flag. Plaintiff Booth was sprayed through the food flag. An Infliction of Pain without Penological Justification is to be considered unnecessary and Wanton. Plaintiff Booth's eighth Amendment was violated. That lying statement By Lt. Allen a Supervisor at Hays State Prison and also how he told the Warden and other Warden's to give Sgt. Smith permission to spray Booth with the chemical Agent without provocation. Plaintiff Booth is an Mental Health Inmate who takes Mental health medication twice a Day. The Georgia Department of corrections office of the Professional Standards Reversed Plaintiff Booth's Disciplinary Reports on 8-3-2017. This incident Happened on Tuesday May 16, 2017 around 1 PM Hour. Pain and Suffering Plaintiff Booth went through: No Mat to sleep on For 17 hours, After spraying the chemical Agent without provocation. Plaintiff Booth did not Recieve the Proper Medical Attention when an Inmate gets sprayed with a chemical Agent According to the Georgia Department of Corrections Standard operating Procedures - Policy name: Use of Force and Restraint For offender control, Policy Number-209.04. No shower For Three Days, the chemicals Dried in Plaintiff Booth's eyes

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For 17 hours causing him to go "Blind" off and on For three days. Burning Feeling all over Plaintiff Booth's Body From Head to toe For 17 hours plus.
Date - 10-29-2021

Is this grievance Being Filed within the 10 day time limit? Yes or No If the Answer is no, Please Explain why. The Eleventh Circuit Dismissed Plaintiff's First Civil Action on 10-26-2021 and I Didn't want to miss any Filing Deadlines.

* Formal grievance Appeal *

* Petitioner Booth stated the same Exact words From the Informal grievance and only added these words: I never Received a Response From the Defendants.*

Date - 12-13-2021, which made 40 Plus Days the Defendants had to Respond to Petitioner Booth's Informal grievance. From 12-13-2021 until this Day 2-14-2023 Petitioner Booth still has not Received a Response For my Informal and Formal grievance Appeal.

* Next, Petitioner Booth will walk this Court The United States Supreme Court Through the steps Petitioner took in a effort to Exhaust Administrative Remedies Before Filing the New lawsuit For Punitive Damages For mental and Emotional Injuries, and the conflict Petitioner Booth had With the Dorm Counselor on Filing the grievance *

Georgia Department of Corrections, Standard Operating Procedures
Functional Area: Facilities Division Reference Number: II B05-0001
Revises previous Effective Date: 6/01/03
Subject: Statewide grievance procedure Authority: Owens/Tillman
Effective Date: 12/10/2012

* Partial copy *

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B. Grievances: 1. Grievable Issues. Except as Provided

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Below, an offender may File a grievance about any Condition Policy, Procedure, or Action or lack thereof that affects the offender personally.

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

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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 counselor 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.

* Here, Petitioner Booth was Housed at Baldwin State Prison Housed in the administration segregation "Lock Down" Room in which he has Been living like this For almost seven years now. As Page 4 of 15 Pages of this GDC Policy States: 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.

* End of Partial copy of Page 4 of 15 Pages * Here, Petitioner Booth

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Was Denied Access to the GDC Grievance Procedure, Petitioner Booth Received the United States Court of Appeals for the Eleventh Circuit order Affirming the District Court's order the week of October 27, 2021. Petitioner Booth then tried to give the Dorm Counselor assigned to the Administration Segregation "Lockdown Dorm" at Baldwin State Prison the Grievance Form Dated 10-29-2021 to the Dorm counselor in an attempt to Exhaust his administrative Remedies before Filing the lawsuit for mental and emotional Injuries for Punitive Damages. The Dorm counselor refused to take the new Grievance and give Petitioner Booth a Grievance Receipt and Turn the new Grievance in to the Grievance Coordinator for processing. Petitioner Booth also tried to Explain to the Dorm counselor how I was on a Filing Time Frame Deadlines for Filing the Grievance and Grievance Appeal and Filing the new lawsuit for mental and emotional Injuries, and also how the Defendants can Put up an affirmative Defense of Failure To Exhaust administrative Remedies. The conversation got heated up with Disrespectful Words between Petitioner Booth and the Dorm counselor and then he Refused to take the grievance for processing. Then Petitioner Booth came up with Plan "B" and that was to get the grievance for the new lawsuit inside the Inmate Counselor Department to any counselor who would Forward it to the grievance coordinator for processing and send me a Receipt of the grievance. Petitioner Booth then gives the officer working the administrative Segregation "Lockdown" Dorm a Envelope with the grievance inside it, a letter inside the Envelope Explaining to all counselors inside the Inmate counselor Department the heated Argument between Petitioner Booth and the administrative segregation Dorm counselor. The officer puts the Envelope inside the Mail Box inside the Administrative segregation lockdown Dorm. The Mail officer picked up the Dorm's Mail the week of 11-1-2021 and the grievance was Delivered to

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The Inmate Counselor Department By hand Delivery which was Permitted By the Georgia Department of Corrections S.O.P. grievance Procedure Which states: * Partial copy of Page 7 of 15 pages * 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 do 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. * Here, Petitioner Booth sent the grievance and grievance Appeal through the Institutional Mail and a letter Explaining to the counselors and grievance coordinator the Conflict of Interest Situation Between Petitioner Booth and the Administrative Segregation Dorm counselor. From 11-1-2021 till this month 2-14-2023 Petitioner Booth still has not Received a Receipt From the grievance or grievance Appeal. Most importantly, Petitioner Booth has not Received a Response From the grievance or the grievance Appeal. *

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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 one time 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. * Here, Petitioner Booth's grievance was Dated 10-29-2021 and the grievance Appeal was Dated 12-13-2021. Again, Petitioner Booth never Received a Response From the grievance or the grievance Appeal.

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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.
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 give a copy of the completed Form to the offender as a Receipt.
- * Here, Petitioner Booth's situation on Exhaustion Applies to section C stated Above Because Petitioner Booth Filed the original grievance and never Received a Response. Then Petitioner Booth Filed the Central office Appeal grievance and never received a response From central office. The Reason why central office appeal never responded to Petitioner Booth's original grievance was Because the grievance coordinator never Processed the lawsuit grievance.
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7. The Commissioner or his / her designee has 100 calendar days after Receipt of the Grievance Appeal by the counselor to deliver a decision

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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. The staff member must promptly give the central office Appeal decision to the offender and have the offender sign a receipt.
Here, Again Petitioner Booth then Filed the original grievance and never received a response from central office. The Reason why central office Appeal never responded to Petitioner Booth's original grievance was because the grievance coordinator never processed the lawsuit grievance so that central office Appeal could have responded to Petitioner Booth's grievance.

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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

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The grievance and will Forward the original grievance to the grievance coordinator at the named Facility for processing.

End of GDC S.O.P.

Next part of this Petition for Writ for cert., Petitioner Booth will state case law and cases in support of the administrative Remedies Being unavailable:
Standard of Review For Exhaustion -

A defendant may raise an Inmate-Plaintiff's Failure to exhaust as an Affirmative defense. Jones, 549 U.S. at 216. (We conclude that

Failure to exhaust as an affirmative Defense under the PLRA...., Pearson v. Taylor, 665 F. App'x 858, 867 (11th cir. 2016), Whatley, 802 F.3d at 1209. When so raised, defendants Bear the Burden of proving that the Plaintiff failed to exhaust his administrative Remedies. Pearson, 665 F. App'x at 867 (quoting Turner v. Burnside, 541 F.3d 1071, 1082 (11th cir. 2008)). See also Trevani v. Robert A. Deyton Det. Ctr, 729 F. App'x 748, 752, White v. Berger, 709 F. App'x 532, 541 (11th cir. 2017) Dimanche, 783 F.3d at 121, Turner, 541 F.3d at 1082.

While Exhaustion is a mandatory Requirement For bringing suit, one exception exists. Ross 136 S. ct. at 1858 (The PLRA contains its own, textual exception to mandatory exhaustion. Under the PLRA, a Prisoner need exhaust only available administrative Remedies. Id. at 1856, see Parao v. Sims, 679 F. App'x 819, 823 (11th cir. 2017.) Drawing From the Plain language of the word available, This Court, The United States Supreme Court has concluded an inmate is Required to exhaust... only those grievance Procedures that are capable of use to obtain some relief For the action complained of. Ross 136 S. ct. at 1858-59, Turner, 541 F.3d at 1084 (quoting Goebert v. Lee County, 510 F.3d 1312, 1322-23 (11th cir. 2007)) (A Remedy must Be available Before it must Be exhausted, and to be available a Remedy must Be capable of use For the accomplishment of its purpose.) Remedies that rational inmates cannot be expected to use are not capable of accomplishing their purposes and so are not available. Turner, 541 F.3d at 1084. Courts Recognize three Kinds of circumstances in which an administrative Remedy, although officially on the Books, is not capable of use to obtain Relief. Ross, 136 S. ct. at 1859. First, an administrative Procedure is unavailable when (despite what Regulations or guidance materials may Promise) it operates as a simple dead end - with officers unable or consistently unwilling to provide any relief to aggrieved inmates. Turner,

541 F.3d at 1083 (noting the PLRA does not Require inmates to craft new Procedures when Prison officials demonstrate... they will refuse to abide by the established ones). Secondly, exhaustion is not Required when an administrative Procedure is so opaque or unknowable no ordinary Prisoner can discern or navigate it. Ross, 136 S.Ct. at 1859-60. Finally, when prison administrators thwart inmates from taking advantage of a grievance process through Machination, Misrepresentation, or Intimidation, such thwarted inmates are not Required to exhaust. Id at 1860, Abram v. Leu, 759 F. App'x 856, 860 (11th Cir. 2019) (An Administrative Remedy may Be unavailable when Prison officials interfere with a Prisoner's Pursuit of Relief. Dimanche, 783 F.3d at 1214 (The PLRA does not Require an inmate to grieve a Breakdown in the grievance Process. (quoting Turner, 541 F.3d at 1083, Miller v. Tanner, 196 F.3d 1190, 1194 (11th Cir. 1999) (Finding exhaustion Does not Require plaintiff-inmates to File an appeal after Being told unequivocally that appeal of an institution-level denial was Precluded).
* End of case law & Cases in support *

* Page 3 of the District Court's order states: *

However, in Plaintiff's Prior lawsuit Based on the exact same Facts, the Eleventh Circuit affirmed this Court's conclusions that the grievance process was available to Plaintiff and that he Failed to exhaust his Remedies Because he filed an untimely grievance. Booth, 2021 WL 4978161 at *4.

Here, the United States Court of Appeals for the Eleventh Circuit erred in its order Dated 12/27/2022 Dismissing Petitioner Booth's New Lawsuit For Punitive Damages By stating it was Frivolous and Affirming on the Issue of How Petitioner Failed to Exhaust his Administrative Remedies Before Filing the lawsuit. First, the Eleventh Circuit Court of Appeals did not establish the two step Process For Resolving motions to dismiss Prisoner lawsuits For Failure to exhaust administrative Remedies. In Turner v. Burnside, 541 F.3d 1077 (11th Cir. 2008), Turner concerned of a two-step Process For

Resolving motions to dismiss Prisoner lawsuits For Failure to exhaust administrative Remedies. First, district Courts must look to the Factual allegations in the Motion to dismiss and those in the Prisoner's Response and accept the prisoner's view of the Facts as true. The Court should dismiss if the Facts as stated by the Prisoner show a Failure to exhaust. See *Whitley v. Warden, Ware State Prison*, 802 F.3d 1205, 1209 (11th Cir. 2015) (describing the Turner test). In the Second step, if dismissal is not warranted on the Prisoner's view of the Facts, the Court makes specific Findings to resolve disputes of Fact, and it should dismiss if, Based on those Findings, defendants have shown a Failure to exhaust. Turner concerned Review of a motion to dismiss, here in contrast, the district Court erred By Dismissing Petitioner Booth's claims sua sponte. The United States Court of Appeals For the Eleventh circuit erred By not applying the First step From Turner to Conclude that the District Court did not conduct a Full analysis in Petitioner Booth's lawsuit. The Eleventh circuit Court of appeals also erred By not accepting all Allegations in Petitioner Booth's complaint as true and construing them in the light most favorable to Petitioner Booth, especially in his pro se capacity, It is not entirely clear that the administrative Remedies that Petitioner Booth failed to exhaust were available to him. The District Court dismissed Petitioner Booth's claims Before the defendants responded to his allegations. While the defendant may Be to assert the affirmative defense of failure to exhaust and show that the grievance process permitted Petitioner Booth to timely File, The Defendants have not yet done so. The United States Court of Appeals For the Eleventh circuit erred By not vacating and Remanding in Part the decision of the District Court so that the Court may consider Petitioner Booth's claims and Proceed to hear responses From the Defendants.

* Page 3 and 4 of the District Court's order states *
In any event, this Court Further Points out that Petitioner claims

Regarding events that occurred in 2017 are clearly Barred by the two year Statute of limitations applicable to 1983 actions Brought in Georgia, and Plaintiff has made no Allegation that would entitle him to avoid the limitations bar. See Hughes v. Lott, 350 F.3d 1157, 1163 (11th Cir. 2003).
End of District court's order

Here, Petitioner Booth Filed the First 1983 civil Action in March 2018 and that civil Action lasted until 10/26/2021 when the Eleventh Circuit Court of Appeals Affirmed the District court's Decision. Then Petitioner Booth Filed the 1983 civil Action For Punitive Damages For mental and emotional injuries in December 2021. To meet a statute of limitations, Plaintiff's need to File their 1983 civil Action Before the Deadline. As long as you File on time it is ok if your case lasts past the deadline. The deadline for a section 1983 is determined by your state's general Personal Injury statute. *See Owens v. Okure, 488 U.S. 235, 236 (1989). * Here, the District court erred by not Burrowing the general or Residual statute For Personal Injury actions.

Reasons For Granting the Petition

The Judicial screening Process must take care not to impose heightened Pleading Requirements for complaints subject to the P.H.A.A. exhaustion Requirement under the rubric of a screening Review. As the Supreme Court has cautioned Judges are to construe the PLRA and not read in by way of creation a Requirement that Plaintiffs establish exhaustion. *Jones*, 549 U.S. at 216. The order in this case read in such a Requirement By dismissing Petitioner Booth's complaint even though Petitioner Booth's complaint, exhibits, and objections contained sufficient information that, if taken as true, would demonstrate that administrative Remedies were unavailable to him for 1997 e (a) purposes. Further, taking Judicial Notice of material beyond what is presented by the Plaintiff to determine the exhaustion issue exceeds the bounds of the screening Process and imposes a pleading standard that is not Required by the text of the PLRA. Therefore, Petitioner Booth Requests that this court vacate the United States Court of Appeals for the Eleventh circuit and District Court's order and Remand the case.

Respectfully submitted this 14th day of February, 2023

Delroy T. Booth