

NOT RECOMMENDED FOR PUBLICATION

No. 21-6135

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 19, 2022
DEBORAH S. HUNT, Clerk

ALEX JOSEPH PEDRIN,)	
)	
Plaintiff-Appellant,)	ON APPEAL FROM THE UNITED
)	STATES DISTRICT COURT FOR
v.)	THE EASTERN DISTRICT OF
)	KENTUCKY
OFFICER T. MIDDLETON, USP-McCreary, et al.,)	
)	
Defendants-Appellees.)	

ORDER

Before: BATCHELDER, GRIFFIN, and MURPHY, Circuit Judges.

Alex Joseph Pedrin, a federal prisoner proceeding pro se, appeals the district court’s judgment in favor of the defendants in his civil rights action, filed pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a).

In September 2020, Pedrin commenced an action against 40 defendants, alleging multiple claims arising out of a January 2020 use-of-force incident while he was housed at USP McCreary. Pedrin alleged that, due to his refusal to comply with an order to “cuff up,” several corrections officers beat him until he lost consciousness, dragged him naked down a hallway, and placed him in four-point restraints, all of which caused him to suffer contusions, lacerations, facial fractures, the loss of a tooth, bruising, head trauma, dislocation of his shoulder, and a bicep rupture. He alleged that medical personnel ignored his injuries, delayed treatment for his head injuries, and denied him other requested treatment. Pedrin further alleged that, when he filed administrative

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complaints, prison officials began to withhold his mail, including legal mail. He claimed that the defendants' use of excessive force, failure to protect him from harm, and deliberate indifference to his medical needs violated the Eighth Amendment and that the withholding of his legal mail violated his First Amendment right to access the courts and his right to counsel under the Fifth and Sixth Amendments. He also raised a claim against the United States for negligent hiring and training under the Federal Tort Claims Act ("FTCA"). Pedrin sought compensatory and punitive damages and injunctive relief.

Pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A, the district court screened Pedrin's complaint and dismissed certain claims and defendants based on Pedrin's failure to state a claim upon which relief may be granted. The court allowed his other claims to proceed, including Pedrin's excessive-force, failure-to-protect, and deliberate-indifference claims against certain defendants and his FTCA claim against the United States.

The remaining defendants then filed a motion to dismiss or, in the alternative, for summary judgment based on Pedrin's failure to exhaust his administrative remedies. The defendants argued that (1) Pedrin's Eighth Amendment claims were subject to dismissal because he failed to comply with the deadlines of the administrative grievance process, and (2) the district court lacked jurisdiction over Pedrin's FTCA claim because Pedrin did not file an administrative claim with the Bureau of Prisons ("BOP") before filing suit in federal court. In response, Pedrin conceded that his FTCA claim was subject to dismissal. He argued, however, that exhaustion of his administrative remedies before bringing his *Bivens* action was not required because the only remedy that would redress his injuries was money damages, which are not available through the BOP's administrative remedy process. The district court rejected Pedrin's argument and dismissed his FTCA and *Bivens* claims without prejudice for failure to exhaust his administrative remedies.

Pedrin then filed a motion for reconsideration, pursuant to Federal Rule of Civil Procedure 59(e). He argued that he did, in fact, exhaust all administrative remedies that were available to him when he was in BOP custody and cited tracking numbers and dates of mailing to show that his grievances and appeals were timely filed. The district court denied the motion, explaining that

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Pedrin failed to raise his arguments in response to the defendants' motion to dismiss and that it would not consider new arguments raised for the first time in a post-judgment motion.

On appeal, Pedrin challenges only the district court's dismissal of his *Bivens* claims based on his failure to exhaust his administrative remedies; he makes no arguments with respect to the district court's initial screening order or the dismissal of his FTCA claim. Pedrin argues that the district court "did not allow [him] an opportunity to show how [e]xhaustion was hindered by [o]fficers" and that the court improperly "used materials out[side of the [p]leadings to [g]rant [d]ismissal." He contends that the documents submitted along with his complaint establish that he exhausted the administrative remedies that were available to him while he was in BOP custody. He further argues that the administrative remedy process was not available to him because, when his filings were denied as untimely and he was directed to get a "staff verification letter," he was unable to get the verification letter "[d]ue to his issues with staff." Pedrin also states that the administrative process was not available to him while he was housed in the Special Housing Unit because officers did not provide him with necessary forms and withheld his mail.

The dismissal of a complaint for failure to exhaust administrative remedies is reviewed de novo. *Mattox v. Edelman*, 851 F.3d 583, 589 (6th Cir. 2017). The Prison Litigation Reform Act (PLRA) requires prisoners to properly exhaust their available administrative remedies before bringing suit with respect to prison conditions. 42 U.S.C. § 1997e(a); *Woodford v. Ngo*, 548 U.S. 81, 93 (2006). A remedy is exhausted upon completion of "the administrative review process in accordance with the applicable procedural rules . . . as defined . . . by the prison grievance process itself." *Lee v. Willey*, 789 F.3d 673, 677 (6th Cir. 2015) (quoting *Jones v. Bock*, 549 U.S. 199, 218 (2007)) (cleaned up). "[I]t is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion." *Jones*, 549 U.S. at 218. "[A] prisoner cannot satisfy the . . . exhaustion requirement by filing an untimely or otherwise procedurally defective administrative grievance." *Scott v. Ambani*, 577 F.3d 642, 647 (6th Cir. 2009).

Under the BOP's Administrative Remedy Program, a prisoner must (1) "first present an issue of concern informally to staff," 28 C.F.R. § 542.13(a); (2) then, if the concern is not resolved informally, file "a formal written Administrative Remedy Request," *id.* § 542.14(a); (3) submit an

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appeal “on the appropriate form (BP-10) to the appropriate Regional Director” if unsatisfied with the warden’s response to the formal request, *id.* § 542.15(a); and (4) finally, appeal the response to his BP-10 by “submit[ting] an Appeal on the appropriate form (BP-11) to the General Counsel,” *id.* “The deadline for completion of informal resolution and submission of a formal written Administrative Remedy Request, on the appropriate form (BP-9), is 20 calendar days following the date on which the basis for the Request occurred.” *Id.* § 542.14(a). An appeal to the Regional Director must be submitted “within 20 calendar days of the date the Warden signed the response,” and an appeal to the General Counsel must be submitted “within 30 calendar days of the date the Regional Director signed the response.” *Id.* § 542.15(a). “If accepted, a Request or Appeal is considered filed on the date it is logged into the Administrative Remedy Index as received.” *Id.* § 542.18.

First, in his response to the defendants’ motion to dismiss, Pedrin did not claim that he had properly exhausted his administrative remedies. He instead argued that he was not required to exhaust his administrative remedies because monetary damages were not available through the administrative process. The district court correctly rejected that argument. In the PLRA, “Congress has mandated exhaustion . . . regardless of the relief offered through administrative procedures.” *Booth v. Churner*, 532 U.S. 731, 741 (2001).

Second, the records submitted by Pedrin and the defendants show that Pedrin did not properly exhaust his administrative remedies. According to Pedrin’s complaint, the use-of-force incident occurred on January 27, 2020. He did not file his Request for Administrative Remedy until April 14, 2020, well past the 20-calendar-day period required by § 542.14(a). Indeed, the request was denied as untimely on April 21, 2020. On May 12, 2020, the Regional Director received Pedrin’s appeal from the warden’s denial. On May 16, 2020, the Regional Director denied the appeal because (1) it was untimely, (2) Pedrin did not provide staff verification explaining why the untimely filing was not his fault, and (3) Pedrin did not provide copies of his Administrative Remedy Request or the warden’s response. According to Pedrin, he sent an appeal to the General Counsel on June 24, 2020. He stated that he was subsequently moved to the Laurel

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County Correctional Complex and therefore never received a response to that appeal. The BOP, however, has no record of Pedrin appealing to the General Counsel.

Because the record demonstrated that Pedrin did not properly exhaust his administrative remedies and he did not offer adequate proof of exhaustion in response, Pedrin's *Bivens* claims were subject to dismissal. And to the extent that Pedrin attempted to argue in his motion for reconsideration that the defendants' actions rendered the administrative remedy process unavailable to him, the district court properly declined to consider those arguments. *See Dean v. City of Bay City*, 239 F. App'x 107, 111 (6th Cir. 2007) ("A motion for reconsideration based on Rule 59(e) . . . is not the proper vehicle for asserting a new claim for the first time.").

Pedrin now argues that the district court "did not allow [him] an opportunity to show how [e]xhaustion was hindered by [o]fficers" and that the court improperly "used materials out[side] of the [p]leadings to [g]rant [d]ismissal." His arguments are unavailing. Pedrin had an opportunity to respond to the defendants' motion to dismiss, but he did not argue that the defendants' actions rendered the administrative process unavailable to him. Instead, he argued that exhaustion was not required. And contrary to Pedrin's assertion, the district court did not improperly consider evidence outside of the pleadings to grant the defendants' motion. It noted that Pedrin did not dispute that he failed to properly exhaust his administrative remedies. In any event, it would not have been improper for the district court to consider the records attached to Pedrin's amended complaint and the motion to dismiss. *See Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008) ("When a court is presented with a Rule 12(b)(6) motion, it may consider the Complaint and any exhibits attached thereto, public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the Complaint and are central to the claims contained therein."). Pedrin expressly referred to the filing of administrative grievances in his complaint, and he attached to his complaint copies of these filings, which bore his own handwritten notes about when such filings were mailed.

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For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

Deborah S. Hunt, Clerk