United States Court of Appeals for the Fifth Circuit

No. 22-30766

A True Copy
Certified order issued Mar 10, 2023

Clerk, U.S. Court of Appeals, Fifth Circuit

RAYSHAWN J. CHRISTMAS,

Plaintiff—Appellant,

versus

UNKNOWN WEDD, *Sergeant*; UNKNOWN GAINES, *Major*; UNKNOWN GUERIN, *Sergeant*; UNKNOWN BROCK, *Warden*; UNKNOWN FLEMMING, *Doctor*; TIM HOOPER, *Warden, Louisiana State Penitentiary*; ALEXIA CAREY, *Social Work*; JAMES M. LEBLANC, *Secretary, Department of Public Safety and Corrections*; JOHN BEL EDWARDS, *Governor of Louisiana*,

Defendants—Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:21-CV-439

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of March 10, 2023, for want of prosecution. The appellant failed to timely pay the fee.

e.g. APPENDIX A PAGE #1 OF 1
JEFF LANDRY LOUISIANA ATTORNEY GENERAL
#38

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

RAYSHAWN J. CHRISTMAS (#433850) **CIVIL ACTION NO.**

VERSUS **21-439-BAJ-EWD**

UNKNOWN WEDD, ET AL.

MAGISTRATE JUDGE'S REPORT, RECOMMENDATION AND ORDER

Before the Court is the Complaint of Rayshawn J. Christmas ("Christmas"), who is representing himself, and who is incarcerated at the Louisiana State Penitentiary ("LSP") in Angola, Louisiana. Pursuant to screening under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A, it is recommended that Christmas' claims be dismissed without prejudice for failure to state a claim, as he failed to properly exhaust administrative remedies prior to filing suit.

I. Background

Christmas filed this suit against Sgt. Wedd, Mjr. Gaines, Sgt. Guerin, Warden Brock, Dr. Flemming, Warden Hooper, Alexia Carey, Clara H., Sec. James M. LeBlanc, and Gov. John Bel Edwards (collectively "Defendants") pursuant to 42 U.S.C. § 1983. Christmas claims that Defendants failed to protect him from violence at the hands of another inmate, and were deliberately indifferent to his serious medical needs, in violation of the Eighth and Fourteenth Amendments.[1] He seeks monetary and injunctive relief.[2]

II. Law & Analysis

A. Standard of Review

This Court is authorized to dismiss an action under 28 U.S.C. §§ 1915(e) and/or 1915A, by a prisoner against a governmental entity or an officer or employee of a governmental entity, or

[1] R. Doc. 1-1, pp. 2-19.
[2] R. Docs. 1, p. 5; 1-1, p. 6.

by any other plaintiff who has been granted IFP status, if the action or claim is frivolous, malicious, or fails to state a claim upon which relief may be granted.[3] The statutes impose similar standards for dismissal and are intended to give the court the ability to separate claims that may have merit from those that lack a basis in law or in fact. Dismissal may be made before service of process or before any defendant has answered if the court determines that the claim or action does not pass the screening process.

To determine whether a complaint fails to state a claim under §§ 1915(e) or 1915A, courts apply the same standard used for dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure.[4] "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"[5] "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[6] All well-pleaded facts are considered to be true and are viewed in the light most favorable to the plaintiff.[7] While the screening process does give the court the rare power to 'pierce the veil' of the factual allegations,[8] pleaded facts that are merely improbable or strange are not frivolous for purposes of screening.[9] A claim is factually frivolous only if the alleged facts are "clearly baseless, a category encompassing allegations that are 'fanciful,' 'fantastic,' and 'delusional.'"[10] A claim is also

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[3] §1915(e) provides for dismissal of lawsuits that are frivolous, malicious, or fail to state a claim in proceedings where the plaintiff was granted leave to proceed *in forma pauperis* ("IFP"); §1915A provides for dismissal of lawsuits by prisoners against a governmental entity or employee of a governmental entity that are frivolous, malicious, or fail to state a claim upon which relief may be granted regardless of the pauper status of the plaintiff. Christmas was granted permission to proceed *in forma pauperis* on August 10, 2021, so both statutes apply. R. Doc. 4.

[4] *Bazrowx v. Scott,* 136 F.3d 1053, 1054 (5th Cir. 1998) (recognizing that the standards for determining whether a complaint fails to state a claim for relief are the same under 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A and Fed. R. Civ. P. 12(b)(6).

[5] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

[6] *Id.*

[7] *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996).

[8] *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

[9] *Denton,* 504 U.S. at 33; *Ancar v. Sara Plasma, Inc.*, 964 F.2d 465, 468 (5th Cir. 1992).

[10] *Denton*, 504 U.S. at 33, citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)).

subject to dismissal if it has no legal basis, "such as if the complaint alleges the violation of a legal interest which clearly does not exist."[11]

B. Christmas Failed to Properly Exhaust Administrative Remedies Prior to Filing Suit

Pursuant to the Prison Litigation Reform Act (PLRA), "[n]o action shall be brought with respect to prison conditions under § 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."[12] The PLRA's exhaustion requirement is mandatory, and unexhausted claims may not be brought in court.[13] When a prisoner fails to exhaust his administrative remedies, he fails to state a claim upon which relief may be granted [14] Generally, a prisoner's failure to exhaust administrative remedies is an affirmative defense under the PLRA and prisoners "are not required to specially plead or demonstrate exhaustion in their complaints."[15] However, the United States Court of Appeals for the Fifth Circuit permits a district court to dismiss a case on its own motion for failure to state a claim, based on failure to exhaust, "if the complaint itself makes clear that the prisoner failed to exhaust."[16]

In Louisiana, an inmate must follow a two-step Administrative Remedy Procedure ("ARP") process to exhaust administrative remedies before filing suit in federal court. The ARP process is codified in the Louisiana Administrative Code under Title 22, Part I, § 325. An inmate starts the ARP process by completing a request for administrative remedy or by writing a letter to the warden.[17] An ARP screening officer screens the inmate's request and either accepts the request

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[11] *Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir. 1998).
[12] 42 U.S.C. § 1997(e)(a).
[13] *Jones v. Bock*, 549 U.S. 199, 211 (2007).
[14] *Hicks v. Garcia*, 372 Fed. Appx. 557, 558 (5th Cir. 2010).
[15] *Jones*, 549 U.S. at 216.
[16] *Carbe v. Lappin*, 492 F.3d 325, 328 (5th Cir. 2014), citing *Jones*, 549 U.S. at 215.
[17] La. Admin. Code Title 22, Part I, § 325(G)(1)(a)(i).

or rejects it for one of the allowed reasons.[18] A request rejected during the screening process cannot be appealed to the second step.

Although a rejection, even if improper or imprudent,[19] does not necessarily render administrative remedies unavailable, the United States Supreme Court has established the following three circumstances in which administrative remedies are considered unavailable, such that the prisoner is relieved of the exhaustion requirement: (1) when the administrative procedure "operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates;" (2) where the administrative scheme is "so opaque that it becomes... incapable of use... [and] no ordinary prisoner can discern or navigate it;" and (3) when "prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation."[20]

Christmas identified the pertinent ARP for these proceedings as 2020-827.[21] Christmas' ARP was rejected at the first step.[22] The Response, attached to the Complaint, states that the ARP was rejected for the following reason: "Established rules and procedures have not been followed. You are addressing more than one complaint (multiple complaints). Established rules and procedures have not been followed. Your complaint is too lengthy."[23]

The Louisiana Administrative Code provides that requesting a remedy for more than one incident (unless the request is a report of sexual abuse), and failure to follow established rules and procedures, are bases for rejecting an ARP at the screening stage.[24] A rejected request is not appealable to the second step and the offender must correct the stated deficiencies and resubmit

[18] La. Admin. Code tit. 22, Part I, § 325(I).
[19] The Report and Recommendation does not reach the question of whether the rejection was proper.
[20] Ross v. Blake, 578 U.S. 632, 643 (2016).
[21] R. Doc. 1, p. 3.
[22] R. Doc. 1, p. 3, R. Doc. 1-1, p. 1.
[23] R. Doc. 1-1, p. 1.
[24] La. Admin. Code tit. 22, Part I, § 325(I)(1)(c)(i)(g) and (h).

the request to the ARP screening officer.[25] The Code specifically provides that "[t]he offender has not properly exhausted administrative remedies if his request is rejected for any of the reasons listed above."[26]

Christmas' ARP was rejected for two of the reasons permitted under the Administrative Code, and there is no information in the Complaint to suggest that he followed the procedure outlined in the Administrative Code to correct the deficiencies that caused his ARP to be rejected. Because his ARP never passed the initial screening phase, Christmas failed to exhaust his administrative remedies available to him prior to filing suit as required by 42 U.S.C. § 1997e, and this Court has no authority to excuse his failure to exhaust.[27] As such, this action should be dismissed for failure to state a claim because Christmas failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997e.

C. Leave to Amend Should be Denied

"Ordinarily, a *pro se* litigant should be offered an opportunity to amend his complaint before it is dismissed."[28] "Granting leave to amend, however, is not required if the plaintiff has already pleaded her best case."[29] Further, leave to amend is not required when an amendment would be futile, *i.e.*, "an amended complaint would still 'fail to survive a Rule 12(b)(6) motion.'"[30]

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[25] La. Admin. Code tit. 22, Part I, § 325(I)(c)(iii).
[26] La. Admin. Code tit. 22, Part I, § 325(I)(c)(iv).
[27] Nothing in the Complaint suggests that administrative remedies would have been unavailable, as defined in *Ross*, above, had Christmas corrected his ARP.
[28] *Wiggins v. Louisiana State University—Health Care Services Division*, 710 Fed. Appx. 625, 627 (5th Cir. 2017) (internal quotation marks omitted).
[29] *Id.*
[30] *See Stem v. Gomez*, 813 F.3d 205, 215-16 (5th Cir. 2016), citing *Marucci Sports, L.L.C. v. Nat'l Collegiate Athletic Ass'n*, 751 F.3d 368, 378 (5th Cir. 2014) (quoting *Jones v. Robinson Prop. Grp., L.P.*, 427 F.3d 987, 994 (5th Cir. 2005).

Because the allegations in the Complaint are unexhausted, and because exhaustion must occur before suit is filed, any amendment would be futile.[31]

RECOMMENDATION

IT IS RECOMMENDED that this action be **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e) and 1915A due to Christmas' failure to exhaust administrative remedies as required by 42 U.S.C. § 1997e.

IT IS FURTHER RECOMMENDED that, if sought, leave to amend be denied as any amendment would be futile.

ORDER

Considering the above recommendation, **IT IS ORDERED** that the Motion for Appointment of Counsel,[32] filed by Rayshawn J. Christmas, is **DENIED without prejudice** to reurging if the recommendation of dismissal of the case is not adopted.

Signed in Baton Rouge, Louisiana, on January 4, 2022.

ERIN WILDER-DOOMES
UNITED STATES MAGISTRATE JUDGE

[31] *Gonzalez v. Seal*, 702 F.3d 785, 788 (5th Cir. 2012) ("It is irrelevant whether exhaustion is achieved during the federal proceeding. Pre-filing exhaustion is mandatory....").
[32] R. Doc. 3.