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Appendix A Court Decisions

Bell v. Washington

United States Court of Appeals for the Sixth Circuit

September 29, 2023, Filed

No. 22-2132

Reporter

2023 U.S. App. LEXIS 25997 *; 2023 WL 6438597

TYRONE ANTHONY BELL, Plaintiff-Appellant, v. HEIDI E. WASHINGTON, et al., Defendants-Appellees.

Notice: CONSULT 6TH CIR. R. 32.1 FOR CITATION OF UNPUBLISHED OPINIONS AND DECISIONS.

Prior History: [*1] ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN.

[Bell v. Washington, 2022 U.S. Dist. LEXIS 198303, 2022 WL 16571300 \(E.D. Mich., Oct. 31, 2022\)](#)

[Bell v. Heidi Wash., 2022 U.S. Dist. LEXIS 115080, 2022 WL 2346370 \(E.D. Mich., June 29, 2022\)](#)

Core Terms

grievance, exhausted, district court, misconduct, injunction, discovery, due process, default, laptop, summary judgment, assault, merits, rights, roll, bed, administrative remedy, default judgment, equitable relief, business day, summary-judgment, allegations, proceedings, documents, intervene, movant

Case Summary

Overview

HOLDINGS: [1]-The district court properly dismissed a prisoner's claim against a prison hearing officer because the officer had served at the prisoner's misconduct hearing, and thus, he had judicial immunity from suit for money damages; [2]-The district court properly concluded that the prisoner had failed to exhaust nearly all of his claims because the evidence provided by the department of correction employees indicated prompt responses to the prisoner's grievances and appeals; [3]- The district court did not abuse its discretion by denying the prisoner's motion for an injunction requiring prison officials to permit him to purchase and possess a

laptop and accessories for litigation purposes and to email legal documents because the prisoner had not demonstrated a likelihood of success on the merits or that he would suffer irreparable harm.

Outcome

District court's judgment affirmed in part, but district court's judgment vacated in part and action remanded for dismissal of unexhausted claims without prejudice. All pending motions denied.

LexisNexis® Headnotes

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN1  **Reviewability of Lower Court Decisions, Preservation for Review**

Issues raised for the first time on appeal are forfeited.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Civil Procedure > ... > Pleadings > Complaints > Requirements for Complaint

HN2  **Standards of Review, De Novo Review**

The court of appeals reviews de novo a district court's judgment dismissing claims under Fed. R. Civ. P.

from system to system and claim to claim, but it is the prison's requirements, and not the Prison Litigation Reform Act, that define the boundaries of proper exhaustion. Failure to exhaust is an affirmative defense that places the burden of proof of exhaustion on the defendants. Consequently, the defendants bear an initial summary judgment burden that is higher in that they must show that the record contains evidence satisfying their burden of persuasion and that no reasonable jury would be free to disbelieve it.

Civil Rights Law > ... > Prisoner Rights > Prison Litigation Reform Act > Exhaustion of Administrative Remedies

HN8 **Prison Litigation Reform Act, Exhaustion of Administrative Remedies**

The appropriate disposition of an unexhausted claim under the Prison Litigation Reform Act is dismissal without prejudice.

Civil Rights Law > Protection of Rights > Prisoner Rights > Discipline

Constitutional Law > Substantive Due Process > Scope

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

Civil Rights Law > Protection of Rights > Prisoner Rights > Segregation

Civil Rights Law > ... > Section 1983 Actions > Scope > Due Process in State Proceedings

HN9 **Prisoner Rights, Discipline**

Generally, a prisoner has no constitutional right to be free from false accusations of misconduct. And a prisoner does not have a procedural right to due process at a hearing unless the disciplinary action implicates a protected interest, such as when a prisoner is facing the loss of good-time credits. 30 days in segregation does not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Public Interest

HN10 **Standards of Review, Abuse of Discretion**

Courts consider four factors in determining whether to grant a preliminary injunction: (1) the movant's likelihood of success on the merits, (2) whether the movant will suffer irreparable harm without the injunction, (3) the probability that granting the injunction will cause substantial harm to others, and (4) whether the public interest will be advanced by issuing the injunction. The first factor is the most important, and it is a question of law that we review de novo. But the court of appeals reviews a district court's ultimate denial of a motion for a preliminary injunction under an abuse-of-discretion standard.

Civil Procedure > Judicial Officers > Judges > Discretionary Powers

Civil Procedure > Pleading & Practice > Pleadings > Supplemental Pleadings

HN11 **Judges, Discretionary Powers**

Although *Fed. R. Civ. P. 15(d)* authorizes district courts to permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented, such motions are addressed to the sound discretion of the district court.

Counsel: TYRONE ANTHONY BELL, Plaintiff - Appellant, Pro se, Jackson, MI.

For HEIDI E. WASHINGTON, ROBERT NAPEL, CONNIE HORTON, THOMAS O'BELL WINN, JAMES CORRIGAN, CAROLLE WALKER, DAVID LALONDE, DANIEL EICHER, Corrections Officer, ARNULFO

The MDOC defendants moved for summary judgment, arguing that Bell's claims were unexhausted. Bell filed a response in opposition and peppered the defendants with discovery requests. The defendants moved to stay discovery until the exhaustion matter was decided. The district court denied the motion, reasoning that no party was entitled to discovery before a scheduling conference occurred and that the court [*5] would not issue a scheduling order until ruling on the summary-judgment motion, for which it did not need additional facts.

Bell then moved for an injunction requiring MDOC Director Heidi Washington and her subordinates to permit Bell to purchase and possess a laptop and accessories for litigation purposes and to email legal documents. He contended that it would cure issues with access to the courts and lack of materials in the prison store caused by the COVID-19 pandemic. Bell also moved for leave to file a supplemental pleading to raise a claim that Washington and her subordinates were violating his equal protection rights by letting similarly situated prisoners use laptops and email legal documents.

On review, the district court concluded that Bell had exhausted only two claims. First, he had exhausted his claim that Officer Eicher issued a false misconduct charge against him for assault. Second, Bell had exhausted his claim that RUM Bischer did not conduct an impartial hearing when he failed to review security surveillance footage that allegedly would have shown that Bell was not responsible for loss or damage to his bed roll. The court concluded that the claim against Eicher lacked [*6] merit as a matter of law and that the claim against Bischer was non-cognizable. Because these claims failed and no others were exhausted, the court granted summary judgment in favor of the MDOC defendants and dismissed Bell's claims with prejudice. The court denied his motion for use of electronic devices as moot and noted that Bell had filed many documents without a laptop. The court denied him leave to file a supplemental pleading because his allegations regarding unequal access to laptops related only indirectly to his complaint.

Bell moved for reconsideration on the grounds that he had been unable to conduct discovery and that prison officials had impeded his attempts to exhaust his administrative remedies. See Fed. R. Civ. P. 59(e). The district court denied the motion, reasoning that discovery was not needed to resolve the exhaustion issue and that Bell was impermissibly rehashing a prior

argument that administrative remedies were unavailable.

Earlier in this appeal, we ordered that Bell's appeal should proceed against all defendants except for Corizon, which had filed a suggestion of bankruptcy.

Bell argues that the district court erred by (1) concluding that he had not stated a claim against Officer [*7] Theut; (2) denying his motion for a default judgment; granting summary judgment (3) as to most claims due to lack of exhaustion and (4) on the merits of the claims regarding the assault and bed roll misconduct convictions, (5) before the completion of discovery; and (6) denying injunctive relief. Bell also contends that MDOC agents conspired to deprive him of due process and equal protection.

As an initial matter, we decline to consider any new claims that Bell may be attempting to raise, such as the conspiracy claim. HN1 [↑] Issues raised for the first time on appeal are forfeited, and no exceptional circumstances exist that merit their consideration. See Dealer Comput. Servs., Inc. v. Dub Herring Ford, 623 F.3d 348, 357 (6th Cir. 2010).

Dismissal of Theut

HN2 [↑] We review de novo a district court's judgment dismissing claims under Rule 12(b)(6). Wesley v. Campbell, 779 F.3d 421, 428 (6th Cir. 2015). In determining whether a complaint states a claim, a court must construe the complaint in the light most favorable to the plaintiff, accept all well pleaded factual allegations as true, and determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007); see also Wesley, 779 F.3d at 428. We review de novo a district court's decision on a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction. See Role v. Zel Custom Mfg. LLC, 816 F.3d 383, 387 (6th Cir. 2016).

The district court [*8] properly dismissed Bell's claim against Theut. Because Theut had served as a prison hearing officer at Bell's URF misconduct hearing, he had judicial immunity from suit for money damages. See Shelly v. Johnson, 849 F.2d 228, 230 (6th Cir. 1988); Powell v. Washington, 720 Fed. Appx. 220, 226 (6th Cir. 2017). HN3 [↑] His actions at the hearing were "function[s] normally performed by a judge," and

The MDOC defendants provided a list of Step III appeals that Bell filed, which confirms that he exhausted his administrative remedies with respect to no more than two of his current claims, i.e., the due process and equal protection claims against Officer Eicher regarding the assault misconduct proceedings and against RUM Bischer regarding the bed roll misconduct proceedings. One URF grievance was referred to URF Reviewing Sergeant Pute, who is not a named defendant, and the grievance was rejected as non-grievable. Other grievances were rejected as untimely.

Bell contends that [*12] he was thwarted from properly exhausting his administrative remedies because (a) his grievances were not timely delivered or processed; (b) URF Correctional Officer Weems said, "If you stop writing all those grievances maybe they will ride you out," i.e., release him from segregation; and (c) SRF Officer West told him that "he didn't have to worry about being charged for the lost or damaged property."

Bell's arguments fail. His allegations that his grievances were not timely delivered or processed are conclusory and not specific to any grievance. Moreover, the evidence provided by the MDOC defendants indicates prompt responses to Bell's grievances and appeals. Finally, Weems's comment was not intimidating or threatening, and West's comment did not misrepresent the grievance process or indicate that Bell should not pursue it. See *Ross v. Blake*, 578 U.S. 632, 644, 136 S. Ct. 1850, 195 L. Ed. 2d 117 (2016).

Therefore, the district court properly concluded that Bell had failed to exhaust nearly all of his claims. But the court erred by dismissing the unexhausted claims with prejudice. *HN8*[¹] "[T]he appropriate disposition of an unexhausted claim under the PLRA is dismissal without prejudice," *Bell v. Konteh*, 450 F.3d 651, 653 n.4 (6th Cir. 2006), and we vacate and remand for that purpose only.

Merits of the Exhausted Claims [*13] and Denial of Discovery

In the first of his two exhausted claims, Bell asserted that Officer Eicher violated his due process and equal protection rights and rights under the *Eighth Amendment* by maliciously writing a false misconduct charge for assault "based on assumptions and conclusions." In the second, Bell asserted that Officer Bischer violated his due process and equal protection rights by finding him guilty of the bed roll charge without

reviewing the relevant security surveillance footage.

We conclude that Bell failed to state a claim against Eicher and Bischer based on these allegations. *HN9*[¹] Generally, "a prisoner has no constitutional right to be free from false accusations of misconduct." *Jackson v. Hamlin*, 61 F. App'x 131, 132 (6th Cir. 2003) (citing *Freeman v. Rideout*, 808 F.2d 949, 951 (2d Cir. 1986)); see also *Frost v. Dep't of Rehab. & Corr.*, No. 20-4146, 2021 U.S. App. LEXIS 16369, 2021 WL 5021042, at *2 (6th Cir. June 1, 2021). And a prisoner does not have a procedural right to due process at a hearing unless the disciplinary action implicates a protected interest, such as when a prisoner is facing the loss of good-time credits. See *Sandin v. Conner*, 515 U.S. 472, 486-87, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995) (holding that 30 days in segregation "did not present the type of atypical, significant deprivation in which a State might conceivably create a 'liberty interest'); *Wolff v. McDonnell*, 418 U.S. 539, 563-67, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974); *Farmer v. Phillips*, No. 20-5730, 2021 U.S. App. LEXIS 31448, 2021 WL 6210609, at *4 (6th Cir. Oct. 19, 2021). Bell has not identified a protected interest. Because his claims failed as a matter of law, he had no right to discovery. [*14] See *Mitchell v. McNeil*, 487 F.3d 374, 379 (6th Cir. 2007).

Denial of Injunctive Relief and Construed Motion to Amend

HN10[¹] Courts consider four factors in determining whether to grant a preliminary injunction: (1) the movant's likelihood of success on the merits; (2) whether the movant will suffer irreparable harm without the injunction; (3) the probability that granting the injunction will cause substantial harm to others; and (4) whether the public interest will be advanced by issuing the injunction. *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009). The first factor "is the most important," *id.* at 277, and it is a question of law that we review de novo, *O'Toole v. O'Connor*, 802 F.3d 783, 792 (6th Cir. 2015). But we review a district court's ultimate denial of a motion for a preliminary injunction under an abuse-of-discretion standard. *Id.*

The district court did not abuse its discretion by denying Bell's motion for an injunction requiring prison officials to permit him to purchase and possess a laptop and accessories for litigation purposes and to email legal documents. Bell had not demonstrated a likelihood of success on the merits or that he would suffer irreparable harm. By the time that Bell sought an injunction, he had

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Nov 28, 2023

KELLY L. STEPHENS, Clerk

TYRONE ANTHONY BELL,)
Plaintiff-Appellant,)
v.)
HEIDI E. WASHINGTON, ET AL.,)
Defendants-Appellee.)

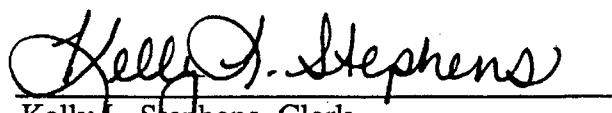
O R D E R

BEFORE: NORRIS, McKEAGUE, and MATHIS, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

*Judge Davis recused herself from participation in this ruling.

Bell v. Washington

United States District Court for the Eastern District of Michigan, Southern Division

October 31, 2022, Decided; October 31, 2022, Filed

Case No. 2:21-cv-12481

Reporter

2022 U.S. Dist. LEXIS 198303 *; 2022 WL 16571300

TYRONE A. BELL, Plaintiff, v. HEIDI WASHINGTON, et al., Defendants.

Subsequent History: Vacated by, in part, Motion denied by, Affirmed by, in part, Remanded by *Bell v. Washington, 2023 U.S. App. LEXIS 25997 (6th Cir. Mich., Sept. 29, 2023)*

Prior History: *Bell v. Heidi Wash., 2022 U.S. Dist. LEXIS 115083, 2022 WL 2346371 (E.D. Mich., June 29, 2022)*

Core Terms

grievance, exhausted, supplemental pleading, electronic device, bedroll, requests, administrative remedy, misconduct, motions, laptop, summary judgment motion, failure to exhaust, grievance process, business day, documents, quotation, genuine, courts, required to exhaust, material fact, unexhausted, thwarted, footage

Counsel: [*1] Tyrone A. Bell, Plaintiff, Pro se, MUSKEGON, MI.

For Heidi Washington, Robert Naples, Connie Horton, Tim O'Bell Winn, James Corrigan, Carol Walker, David LaLonde, T. Eicher, Correctional Officer, A. Ortiz, Correctional Officer, Libby, Correctional Officer, Babcock, Correctional Officer, Miller, Correctional Officer, M. Macdonald, Correctional Officer, Weems, C/O, M. Aldrich, C/O, Bond, C/O, Trombley, C/O, Dave Berry, Quartermater, T. Corey-Spiker, Resident Unit Manager, James Bischer, Resident Unit Manager, Jodie Anderson, Resident Unit Manager, Barry R. Butler, Resident Unit Manager, D. Plumm, Assist. Resident Unit Manager, John McCollum, Hearing Investigator, Michael McLean, Grievance Coordinator, Reesie A. Stranly, Nurse, Bethany Stain, Nurse, Melissa IaPlunt, Health Unit Manager, Amy, Nurse, McDowell, Nurse, Richard D. Russell, Legal Administrator, A. Pratt, Dukan McLaren, Defendants: Allan J. Soros, Michigan

Department of Attorney General, MDOC Division, Lansing, MI.

Judges: HONORABLE STEPHEN J. MURPHY, III, United States District Judge.

Opinion by: STEPHEN J. MURPHY, III

Opinion

OMNIBUS OPINION AND ORDER

Plaintiff Tyrone A. Bell filed the present pro se 28 U.S.C. § 1983 action against more than thirty Michigan Department of [*2] Corrections (MDOC) officials. ECF 1. After Plaintiff amended the complaint, ECF 17, Defendants jointly moved for summary judgment on exhaustion grounds, ECF 39. The parties briefed the motion. ECF 49; 50; 51. Unrelated to summary judgment, Plaintiff filed six consecutive motions or requests about his use of electronic devices, and he also moved for leave to file a supplemental pleading. ECF 69-75. Defendants responded to Plaintiff's requests about electronic devices. ECF 76. For the reasons below, the Court will grant Defendants' motion for summary judgment and deny all of Plaintiff's recent requests and motions.¹

BACKGROUND

The allegations in the amended complaint described events beginning in October 2019 that occurred while Plaintiff was incarcerated at the Chippewa Correctional Facility (URF) and at the Saginaw Correctional Facility

¹The Court need not hold a hearing because Plaintiff is proceeding pro se and is incarcerated. *E.D. Mich. L.R. 7.1(f)(1)*

Under the PLRA, a prisoner must exhaust his or her administrative remedies before suing. 42 U.S.C. § 1997e(a); Woodford v. Ngo, 548 U.S. 81, 90, 126 S. Ct. 2378, 165 L. Ed. 2d 368 (2006). A prisoner need not plead exhaustion in the complaint. Jones v. Bock, 549 U.S. 199, 216, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007). Rather, a prison official must raise failure to exhaust as an affirmative defense. *Id.*

To prove the affirmative defense, the prison official must show "that no reasonable jury" could find that the prisoner exhausted his or her administrative remedies. Surles v. Andison, 678 F.3d 452, 455-56 (6th Cir. 2012). A prisoner properly "exhausts his remedies when he complies with the grievance procedures put forward by his correctional institution." Mattox v. Edelman, 851 F.3d 583, 590 (6th Cir. 2017) (citing Jones, 549 U.S. at 217-19). "[A] prisoner cannot satisfy the PLRA exhaustion requirement by filing an untimely or otherwise procedurally defective administrative grievance." Scott v. Ambani, 577 F.3d 642, 647 (6th Cir. 2009) (citing Woodford, 548 U.S. at 83). In short, the PLRA "requires proper exhaustion." Woodford, 548 U.S. at 83.

But federal courts may address unexhausted claims in two situations. For one, courts may consider unexhausted prisoner claims if a prison official declined to enforce its "own procedural requirements and opt[ed] to consider otherwise-defaulted claims [*7] on the merits." Reed-Bey v. Pramstaller, 603 F.3d 322, 325 (6th Cir. 2010). For two, courts may excuse a prisoner's failure to exhaust if the administrative remedies were unavailable to him. Ross v. Blake, 578 U.S. 632, 136 S. Ct. 1850, 1858-60, 195 L. Ed. 2d 117 (2016).

In practice, the PLRA's exhaustion requirement accomplishes three ends: exhaustion "allow[s] prison officials a fair opportunity to address grievances on the merits, to correct prison errors that can and should be corrected[,] and to create an administrative record for those disputes that eventually end up in court." Mattox, 851 F.3d at 591 (quotations omitted). If a prisoner flouts the prison's grievance procedures, courts typically dismiss unexhausted claims and address only the merits of exhausted claims. Jones, 549 U.S. at 220-24.

II. MDOC Grievance Policy

The primary grievance procedure outlined in MDOC Policy Directive 03.02.130 contains four parts. First, the prisoner must "attempt to resolve the issue with the staff member involved within two business days after becoming aware of a grievable issue." ECF 39-2, PgID 466 ¶ Q.

Second, if the issue is unresolved, the prisoner may file a "Step I grievance" "within five business days after the [prisoner] attempted to resolve the issue with appropriate staff." Id. at 466 ¶ Q, 467 ¶ W. The prisoner must include the "[d]ates, times, places, and names of all those involved" in [*8] the grievance form. Id. at 466 ¶ S. The prisoner must send a completed Step I grievance form "to the Step 1 Grievance Coordinator designated for the facility." Id. at 467 ¶ W. Usually, the prison must respond within fifteen business days after receiving it. Id. at 468 ¶ Z. "Grievances and grievance appeals at all steps [are] considered filed on the date received by the [prison's Grievance] Department." Id. at 467 ¶ T.

Third, the prisoner may file a Step II grievance form with the prison's Step II Grievance Coordinator if (i) he is dissatisfied with the Step I response, or (ii) he did not receive a timely response. Id. at 469 ¶ DD. The prisoner must file a Step II grievance form within ten business days of (i) receipt of the Step I response, or (ii) expiration of the prison's time to respond. Id.; see also id. at 467 ¶ U (If the prisoner "chooses to pursue a grievance that has not been responded to by staff within required time frames, . . . the [prisoner] may forward the grievance to the next step of the grievance process within ten business days after the response deadline expired."). Put differently, if a prisoner does not receive a Step I response within fifteen days, the prisoner must file a Step II grievance within the next ten days.

Fourth, the [*9] prisoner may file a Step III grievance to the prison's Grievance Section if (i) he is dissatisfied with the Step II response, or (ii) he did not receive a timely response. Id. at 470 ¶ HH. The prisoner must file a Step III grievance form within ten business days of (i) receipt of the Step II response, or (ii) expiration of the prison's time to respond. Id. In the end, "[t]he grievance process is not complete until either the MDOC responds to the Step III appeal or the time for doing so expires." Moore v. Westcomb, No. 2:20-cv-179, 2021 U.S. Dist. LEXIS 88434, 2021 WL 1851130, at *2 (W.D. Mich. May 10, 2021).

III. Plaintiff's Failure to Exhaust

Beginning in 2019, Plaintiff filed five Step III grievance appeals at the Chippewa and Saginaw Correctional Facilities. ECF 39-3, PgID 475-76. The Court will first address whether Plaintiff properly exhausted each grievance. After, the Court will explain why his unexhausted claims did not result from an unavailable administrative procedure.

at 643 (citation omitted). Second, when the "administrative scheme might be so opaque that it becomes, practically speaking, incapable of use" such that "no ordinary prisoner can discern or navigate it." *Id.* at 643-44. And third, "when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Id.* at 644.

Simply put, nothing in Plaintiff's response suggested that he "lacked an available administrative remedy" such that the Court could excuse his failure to exhaust. *Id.* at 636; see ECF 49, PgID 556-64. For instance, no facts suggest that MDOC's exhaustion procedures "operate[d] as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates." *Ross, 578 U.S. at 643*; see ECF 49, PgID 557-59, 562. Nor is the procedure "so opaque that it [became], practically speaking, incapable of use." *Ross, 578 U.S. at 643*; see ECF [*14] 49, PgID 557-59, 562. And there is no evidence that MDOC officials thwarted Plaintiff's access to the grievance process or that they had "devised a procedural system in order to trip up all by the most skillful prisoners." *Ross, 578 U.S. at 644* (cleaned up); see ECF 49, PgID 557-59, 562. To the contrary, the evidence shows that MDOC promptly responded to every grievance and appeal that Plaintiff submitted. See ECF 39-3, PgID 475-76, 479-83, 489-508.

Plaintiff claimed a corrections officer had threatened him when he told Plaintiff that if he "stop[ped] writing all those grievances maybe they will ride [Plaintiff] out." ECF 49, PgID 562. Plaintiff took the comment as a "threat" that if he continued to file grievances, "he would remain in segregation." *Id.* But Plaintiff never suggested that the threat then caused him to discontinue with the grievance process. In fact, the evidence supports the opposite conclusion. Plaintiff noted that the "threat" occurred in "late December early January of 2020." ECF 49, PgID 562. MDOC records show that Plaintiff filed five Step III appeals between December 12, 2019 through September 21, 2020. ECF 39-3, PgID 475-76.

Beyond that, Plaintiff claimed he believed "he no longer [*15] needed to pursue the grievance process" as to the bedroll issue after a corrections officer told him that "he didn't have to worry about being charged for the lost or damaged [bedroll] property." ECF 49, PgID 562. But even construing that fact in Plaintiff's favor, *60 Ivy St. Corp., 822 F.2d at 1435*, the officer never suggested that Plaintiff should discontinue the grievance process—only that he didn't think Plaintiff would be charged for

the damaged bedroll, see ECF 49, PgID 562. The officer, therefore, never "misled" Plaintiff "so as to prevent [his] use of otherwise proper procedures." *Ross, 578 U.S. at 644*. Plus, MDOC conceded that at least one of his grievances about the bedroll was fully exhausted. ECF 39, PgID 455.

Plaintiff last filed a declaration to support his assertion that MDOC thwarted his ability to timely exhaust his administrative remedies.² ECF 50, PgID 587-89. In the declaration, he broadly stated that MDOC "has a practice, pattern, []or custom of not processing grievances []or holding legal documents until they are untimely filed." *Id.* at 588. But Plaintiff failed to explain with specificity how MDOC thwarted his ability to exhaust his claims. See *id.* He disclosed no dates, names, or even which grievances he was allegedly [*16] blocked from exhausting. See *id.* Plaintiff's declaration therefore does not create a genuine issue of material fact that officials tried to interfere with Plaintiff's "pursuit of relief" such that "the administrative process [became] unavailable" to him. *Ross, 578 U.S. at 644*.

In sum, there is no genuine issue of material fact that Plaintiff failed to exhaust certain claims because he "lacked an available administrative remedy." *Id. at 636*. As a result, the Court will not excuse his failure to exhaust. The Court will thus dismiss the claims against all Defendants except Bischer and Eicher for failure to exhaust.

IV Exhausted Claims

Two exhausted claims remain against Defendants Eicher and Bischer. The Court will address each claim in turn.

A. *Claim Against Defendant Eicher*

Plaintiff's first claim, exhausted in grievance URF-19-10-2827-27A, alleged that Defendant Eicher "knowingly, intelligently, intentional[,] and willfully falsified a Class I misconduct . . . for assault [and] battery." ECF 39-3, PgID 507; see ECF 17, PgID 239, 247, 249-252. In other words, Plaintiff alleged that Defendant Eicher filed "false disciplinary charges against [him]." *Person v.*

²Because Plaintiff never requested leave to file multiple responses, the Court will liberally construe the declaration, ECF 50, PgID 587-90, as an exhibit to his initial response, ECF 49.

omitted). The request³ is essentially an extension of his previous motion, ECF 69. For the same reasons enumerated above, the Court will deny the request, ECF 70.

C. ECF 71: Request for a Video Hearing

The Court will deny Plaintiff's request for a video hearing. Simply put, "the [C]ourt will not hold a hearing on . . . a motion in a civil case where a person is in custody unless the judge orders a hearing." *E.D. Mich. L.R. 7.1(f)(1)*. The Court has not ordered a hearing, nor is it needed to resolve the summary judgment motion. Thus, the request for a hearing is denied.

D. ECF 72: Motion for Expedited Consideration

Plaintiff moved for expedited consideration of his motions and requests "to allow Plaintiff, pro se litigant, to purchase, use and possess a laptop, thumb drives, hand-held scanner, and [an] external hard drive for litigation [*21] and educational purposes." ECF 72, PgID 780-81. The Court will deny the motion for expedited consideration as moot because his motion and request for the use of electronic devices have been resolved.

E. ECF 73 and 74: Motion to File Supplemental Pleading

Plaintiff moved for leave to file a supplemental pleading "raising a continual constitutional violation." ECF 73, PgID 788. Plaintiff explained that his supplemental pleading would focus on MDOC employees who "are violating Plaintiff's Constitutional rights under the *Equal Protection Clause*" because other "inmates at several institutions [are allowed] to access and use electronic mailing for litigation, to send/receive legal documents to/from the court and adverse parties related to the litigation." *Id.* at 788-89. The Court will liberally construe Plaintiff's motion as one under *Federal Rule of Civil*

³ Defendants pointed out that Plaintiff had recently filed a similar request in another case in the Eastern District of Michigan before Judge Shalina D. Kumar. ECF 76, PgID 801 (citing *Bell v. Washington*, 4:21-cv-10705, ECF 260 (E.D. Mich. Oct. 18, 2022)). It appears that Plaintiff has filed identical motions and requests in the two cases. Compare ECF 70; 72; 73; 74; 75, with *Bell*, 4:21-cv-10705, ECF 221; 224; 225; 226 (stricken); 257.

Procedure 15(d) because the facts raised in the supplemental pleading address "events occurring subsequent to the initial pleading." *Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-CV-00896, 2015 U.S. Dist. LEXIS 201635, 2015 WL 13034990, at *5 (S.D. Ohio Aug. 7, 2015); see ECF 74; *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (quotation omitted).

"Under Rule 15, leave should be freely given, in the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance [*22] of the amendment, and futility of amendment." *Husted*, 2015 U.S. Dist. LEXIS 201635, 2015 WL 13034990, at *6 (internal quotation marks and brackets omitted) (quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962)). And although "supplemental claims need not arise from the same transactions or occurrences as the original claims," the Court "may deny leave to file a supplemental pleading where that pleading relates only indirectly, if at all, to the original complaint and the alleged cause of action arose out of an entirely unrelated set of facts." *Id.* (cleaned up).

The Court will deny Plaintiff leave to file a supplemental pleading because the facts alleged in the pleading "relate[] only indirectly" to the complaint. Compare ECF 17 (amended complaint), with ECF 74 (supplemental pleading). Plaintiff's complaint relates to various prison conditions that allegedly violated his constitutional rights. See ECF 17, PgID 232-47. But the supplemental pleading centers on MDOC's alleged equal protection violation in its policy about prisoner access to laptops. ECF 74, PgID 793-96. The only relation between the facts in the supplemental pleading and the facts in the amended complaint is that Plaintiff would like to use a laptop for litigation purposes, and the present case is proof that Plaintiff is litigating [*23] at least one case. ECF 74, PgID 795. The connection is only tangential, however, because Plaintiff did not limit the purpose for the laptop to this case alone.⁴ See *id.* Instead, Plaintiff sought to use the electronic devices for general litigation and educational purposes. See ECF 74, PgID 794 (asking that the Court allow Plaintiff "to e-file legal documents with the courts and/or adverse parties").

⁴ Plaintiff filed an identical motion for leave to file a supplemental pleading in his case before Judge Kumar. Compare ECF 73, with *Bell*, 4:21-cv-10705, ECF 225 (E.D. Mich. Oct. 5, 2022). The duplicate filing confirms that the motion is not tailored to the facts of the present case. ¹⁶

Appendix B Proof of Corruption and Unavailable Administrative Remedies

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TYRONE ANTHONY BELL #240434

Plaintiff,

VS

HEIDI WASHINGTON, et, al.

Defendants,

Case No. 2:21-cv-12481
Hon. Stephen J. Murphy III
Mag. Patricia T. Morris

DECLARATION OF BRUCE-X PARKER #593090

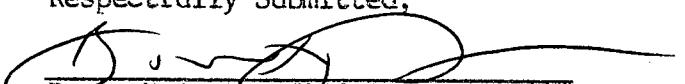
I, Bruce-X Parker, #593090, declare (verify, certify and state) under the penalty of perjury that the forthcoming is true and correct pursuant to 28 USC 1746.

1. I was an inmate at Chippewa Correctional Facility (URF).
2. While at URF I witnessed staff corruption in the following forms:
 - a. falsifying misconducts;
 - b. invidious discrimination based on race;
 - c. failure to investigate prisoners grievances;
 - d. failure to process grievances
 - e. hearing investigator failure to investigate misconducts without bias;
 - f. inspectors failure to investigate staff corruption;

VERIFICATION

I, Bruce-X Parker, have read my statements raised in this Declaration and declare under the penalty of perjury that the statements made within this Declaration are true and correct pursuant to 28 USC 1746.

Respectfully Submitted,


Bruce-X Parker #593090
Declarant

Date: 12/01/ 2022

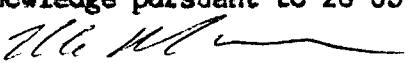
Affidavit of Michael Blakeman #581370

I, Michael Blakeman declare (or certify, state, or verify) that the following is true and correct to the best of my ability under the penalty of perjury pursuant to 28 US 1746.

1. That I was housed at Chippewa Correctional Facility from 2015 til 2020
2. That I have witnessed firsthand the following:
 - a. Staff corruption including but not limited to:
 - i. Falsification of misconduct reports;
 - ii. Threatening and intimidating behavior;
 - iii. Retaliation;
 - iv. Conspiracy;
 - v. Daily violating the constitutional rights of offenders at Chippewa Correctional facility;
 - vi. Wrongfully conversion and/or destruction of prisoner's personal property;
 - vi. Failure to act;
 - vii. Failure to intervene
 - ix. Failure to supervise;
 - x. Cruel and unusual punishment;
 - xi. Iuvidious discrimination based on race;
 - xii. Negligence

All of these actions were conducted while in uniform, under the color of state law. I will be willing to testify about these matters and more in open court, before a jury.

I, Michael Blakeman declare (or certify, state, or verify) that the above aforementioned statement is true, correct, complete and not misleading to the best of my ability and knowledge pursuant to 28 US 1746.



Affiant's Signature

Affidavit of Mitchell Smith #188215

I, Mitchell Smith declare (or certify, state, or verify) that the following is true and correct to the best of my ability under the penalty of perjury pursuant to 28 US 1746.

1. That I was housed at Chippewa Correctional Facility from 2015 til 2020
2. That I have witnessed firsthand the following:
 - a. Staff corruption including but not limited to:
 - i. Falsification of misconduct reports;
 - ii. Threatening and intimidating behavior;
 - iii. Retaliation;
 - iv. Conspiracy;
 - v. Daily violating the constitutional rights of offenders at Chippewa Correctional facility;
 - vi. Wrongfully conversion and/or destruction of prisoner's personal property;
 - vi. Failure to act;
 - vii. Failure to intervene
 - ix. Failure to supervise;
 - x. Cruel and unusual punishment;
 - xi. Invidious discrimination based on race;
 - xii. Negligence

All of those actions were conducted while in uniform, under the color of state law. I will be willing to testify about these matters and score in open court, before a jury.

I, Mitchell Smith declare (or certify, state, or verify) that the above aforementioned statement is true, correct, complete and not misleading to the best of my ability and knowledge pursuant to 28 US 1746.

Mitchell Smith #188215
Affiant's Signature

Appendix C Invidious Discrimination Based On Race

9. They Q.C.C. received were to test all parts of my class I miscom class
10. They I was present when Mrs. Society told me that only the class
11. After I had given a class on Dec. 5, 1919

B. They when I received the class I miscom class I was — Physics miscom class first

7. They within the last 12 months I have received and been found guilty
in the following (untrue) miscom class.

8. On DEC 10 — Q.C.C. I was given no favorable summons by the Q.C.C.

for the class I miscom class

5. On DEC 3 — Q.C.C. I was given the Q.C.C. (regular) class I miscom class

4. On DEC 8 — Q.C.C. I was given no days detention by authority leave
until that the class I miscom class

3. On NOV-25 — Q.C.C. I was taken to the dormitory for the class I miscom class

2. On NOV-19 — Q.C.C. I was taking a class I miscom class

1. I am an employee - Home car

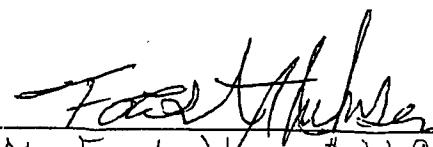
I, Horace Johnson, affirm, swear that the facts in this affidavit are true
Complete to the best of my belief and are as follows:

"In Dec, 1918, Horace Johnson, 50115, L.M. 2169, S.A. March 22, 1922
The Drama Sociey, United States, Keys 53812 and 524, 536
(July 1918). After the Sociey to make

Courtly of Justice —
Courtly of Justice —
State of Michigan

11. That Mr. Bell and myself were both in Quarry Unit (SEGREGATION) at the same time.
12. That my cell was #8 which is right next to Mr. Bell's cell.
13. That I could see and hear all conversations conducted in front of Mr. Bell's cell.
14. That Mr. Bell's cell was less than 20 feet from my cell.
15. That Mr. Bell's cell door and window could clearly be seen from my cell door and window.

Pursuant to 28 USC 1746, I declare (or certify, verify or state) under the penalty of perjury that the foregoing is true and correct.



MR. Forest Johnson # 2069047
Affiant

Date: Dec. 10, 2019

Appendix D Other Supporting Evidence

Affidavit of Murray # 440309

I, Murray # 440309 duly swear (affirm, declare or clarify) that the following is the true, complete and not misleading:

1. On May 28, 2019 I was the cell mate of Tyrone Bell inmate 240434.
2. That I was present when C.O. Trombly brought Mr. Bell a duffle bag to the cell.
3. That C.O. Trombly never told Mr. Bell to take his bed roll with him.
4. That when Mr. Bell had return to the unit his bedding was by the water closet on the floor in the hallway.
5. That the water closet nearest cell 77/78 had been leaking water.
6. That Mr. Bell was going to retrieve his bedding until he noticed it sitting in front of the water closet on the floor.

I, Murray # 440309 swear that the above statement is my true account of events the complete truth and not misleading to the best of my ability. As I witnessed it firsthand.

Date: July 27, 2020

Lorenzo Murray
Affiant

UNITED STATE COURT OF APPEALS
FOR THE SIXTH CIRCUIT
Case No. 22-2132

TYRONE ANTHONY BELL,
Plaintiff-Appellant,

vs

HEIDI WASHINGTON, MDOC Director, ROBERT NAPLES, Assist Director MDOC, CONNIE HORTON, Warden-URF, TIM O'BELL WINN, Warden-SRF, JAMES CORRIGAN, Deputy Warden-URF, CAROL WALKER, Assist Deputy Warden-SRF, DUNCAN McCLEAN, Assist Deputy Warden-URF, DAVID LALONDE, Assist Deputy Warden-URF, DANIEL EICHER, Correctional Officer-URF, John Doe #1, Sergeant-URF, ARNUFLO ORTIZ, Correctional Officer-URF, LAWNEY LIBBY, Correctional Officer-URF, KODY BABCOCK, Correctional Officer-URF, ROBERT MILLER, Correctional Officer-URF, MITCH MACDONALD, Correctional Officer-URF, BILLY WEEMS, Correctional Officer-URF, MATTHEW ALDRICH, Correctional Officer-SRF, JEFFERY BOND, Correctional Officer-SRF, BRAIN TROMBLEY, Correctional Officer-SRF, DAVID BERRY, Quartermaster-SRF, TERESA COREY-SPIKER, Resident Unit Manager-URF, JAMES BISCHER, Prisoner Counselor-SRF, JODIE ANDERSON, Resident Unit Manager-SRF, BARRY BUTLER, Prisoner Counselor-URF, DUSTIN PLUMM, Prisoner Counselor-URF, JOHN MCCOLLUM, Grievance Coordinator-URF, ANGELA PRATT, Grievance Coordinator-SRF, BETHANY STAIN, Health Unit Manager-URF, MELISSA LAPLUNT, Register Nurse-URF, RESSIE STRANALY, Register Nurse-URF, AMY MADOWELL, Register Nurse-URF, CORIZON HEALTHCARE, Medical Provider,

Defendant-Appellee

DECLARATION OF DEMETRIUS DARNELL MCBRIDE # 192829

I, Demetrius McBride declare the following:

- 1.] I make this declaration on my own free will. I was not threatened, coerced, nor under duress.
- 2.] While at Chippewa Correctional Facility I experienced MDOC actors, agents, and/or employees thwart my ability to exhaust my administrative remedies.
- 3.] While I was in segregation I had to place my grievances in the cell door to be process.
- 4.] The grievances were take by correctional staff.
- 5.] After days of waiting I never received a grievance receipt.
- 6.] MDOC staff in segregation either threw my grievances in the trash. Or the grievance coordinator did not process my grievances.

UNITED STATE COURT OF APPEALS
FOR THE SIXTH CIRCUIT
Case No. 22-2132

TYRONE ANTHONY BELL,
Plaintiff-Appellant,

vs

HEIDI WASHINGTON, MDOC Director, ROBERT NAPLES, Assist Director MDOC, CONNIE HORTON, Warden-URF, TIM O'BELL WINN, Warden-SRF, JAMES CORRIGAN, Deputy Warden-URF, CAROL WALKER, Assist Deputy Warden-SRF, DUNCAN McCLEAN, Assist Deputy Warden-URF, DAVID LALONDE, Assist Deputy Warden-URF, DANIEL EICHER, Correctional Officer-URF, John Doe #1, Sergeant-URF, ARNUFLO ORTIZ, Correctional Officer-URF, LAWNEY LIBBY, Correctional Officer-URF, KODY BABCOCK, Correctional Officer-URF, ROBERT MILLER, Correctional Officer-URF, MITCH MACDONALD, Correctional Officer-URF, BILLY WEEMS, Correctional Officer-URF, MATTHEW ALDRICH, Correctional Officer-SRF, JEFFERY BOND, Correctional Officer-SRF, BRAIN TROMBLEY, Correctional Officer-SRF, DAVID BERRY, Quartermaster-SRF, TERESA COREY-SPIKER, Resident Unit Manager-URF, JAMES BISCHER, Prisoner Counselor-SRF, JODIE ANDERSON, Resident Unit Manager-SRF, BARRY BUTLER, Prisoner Counselor-URF, DUSTIN PLUMM, Prisoner Counselor-URF, JOHN MCCOLLUM, Grievance Coordinator-URF, ANGELA PRATT, Grievance Coordinator-SRF, BETHANY STAIN, Health Unit Manager-URF, MELISSA LAPLUNT, Register Nurse-URF, RESSIE STRANALY, Register Nurse-URF, AMY MADOWELL, Register Nurse-URF, CORIZON HEALTHCARE, Medical Provider,

Defendant-Appellee

DECLARATION OF JEREMY RYAN RUSSELL # 408509

I, Jeremy Russell, declare the following:

1.] I make this declaration on my own free will. I was not threatened, coerced, nor under duress.

2.] While at Chippewa Correctional Facility I experienced MDOC actors, agents, and/or employees thwarting my ability to exhaust my administrative remedies.

3.] While I was in segregation on 4-1-23 I had to place my grievances in the cell door to be processed, as is the custom and practice at URF. See URF-23-04-636-28E

4.] The grievance was take by correctional staff on 4-1-23.

5.] After days of waiting I never received a grievance receipt.

6.] After transfering to another facility I wrote the grievance coordinator

Proof of Service
Tycone Fell -v- Heidi Washington, et. al.

MICHIGAN DEPARTMENT OF CORRECTIONS

CSJ-318

DISBURSEMENT AUTHORIZATION (EXPEDITED LEGAL MAIL – PRISONER)

REV. 11/15 4835-3318

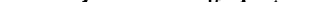
Please PRINT clearly, illegible and/or incomplete forms will not be processed.

Lock F-43 Institution G. Roderick Clarke Judicial Facility - XE
Prisoner Number 24134 Prisoner Name THOMAS ALFRED PELL
Type or Print Clearly

Legal Postage Filing Fee \$ Certified Mail (Must Be a Court Ordered Requirement)
 New Case Case Number

Pay To Bethel W. Pech, Office of Mich. Atty. General
Address Michigan Division, P.O. Box 31736
Lansing, Michigan 48909
Petition For Writ of Certiorari and Appendices Attached

The Following Section Must Be Completed In Authorizing Staff Member's Presence

Prisoner Signature -  Date & Time Submitted 1-31-2015 10:17 AM

Received by Heather H. Staff Signature Heather

Date & Time Received by Authorizing Staff 11/3/2017 085

Authorization Denied

Does not meet definition of legal mail or court filing fee as identified in OP 05.03.118

Not hand delivered to authorizing staff member New case or case number not on form

Does not include court order for handling as certified mail Other (explain)

Prisoner refused to sign & date in staff member's presence

Denied by

Type or Print Name & Title _____ Signature _____

Section Below to be Completed by Mail Room Staff

Placed in Mail by _____
Type or Print Name & Title _____ **Signature** _____

Postage Amount **\$** **Date Placed in Outgoing Mail**

Only Business Office Staff are to Write in the Section Below

Only Business Office Staff are to Write in the Section Below

Total
Postage \$ Obligation \$ Court Filing Fee Denied Due to NSF

Date Copy Sent to Prisoner

Processed by _____
Type or Print Name & Title _____ Signature _____

Proof of Service
Tyrone Bell -v- Heidi Washington, et. al.

MICHIGAN DEPARTMENT OF CORRECTIONS

CSJ-318

DISBURSEMENT AUTHORIZATION (EXPEDITED LEGAL MAIL - PRISONER)

REV. 11/15 4835-3318

Please PRINT clearly, illegible and/or incomplete forms will not be processed.

Lock F-43 Institution G. Rode & Cotton Correctional Facility

Prisoner Number 240434 Prisoner Name Tyrone A. Washington

Legal Postage Filing Fee \$ _____ Certified Mail (Must Be a Court Ordered Requirement)

New Case Case Number _____

Pay To Allan J. Hill, Office of Legal Attorney General

Mailing Address P.O. Box 36217

Lansing, Michigan 48909

Petition for Writ of Coram Coram and Appendices Attached

The Following Section Must Be Completed In Authorizing Staff Member's Presence

Prisoner Signature 11/21/11 Date & Time Submitted 11/21/11

Received by 11/21/11 Staff Signature 11/21/11

Type or Print Name & Title CLERICAL PK

Date & Time Received by Authorizing Staff 11/21/11

Authorization Denied

Does not meet definition of legal mail or court filing fee as identified in OP 05.03.118
 Not hand delivered to authorizing staff member New case or case number not on form
 Does not include court order for handling as certified mail Other (explain)
 Prisoner refused to sign & date in staff member's presence

Denied by

Type or Print Name & Title _____ Signature _____

Section Below to be Completed by Mail Room Staff

Placed in Mail by _____ Signature _____
Type or Print Name & Title _____

Postage Amount \$ _____ Date Placed in Outgoing Mail _____

Only Business Office Staff are to Write in the Section Below

Total
Postage \$ _____ Obligation \$ _____ Court Filing Fee Denied Due to NSF

Filing Fee \$ _____ Check # _____

Date Copy Sent to Prisoner _____

Processed by _____ Signature _____
Type or Print Name & Title _____