UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

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| JAMES MICHAEL HENSLEY, JR., | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | No. 2:23-cv-00562-JRS-MJD |
| | ) | |
| COBB Sergeant, | ) | |
| SANACOUCIE Officer, | ) | |
| | ) | |
| Defendants. | ) | |

**ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

James Hensley sues two correctional officers whom he alleges failed to intervene in an attack that left him hospitalized with serious head injuries. The defendants have asserted the affirmative defense that Mr. Hensley failed to pursue administrative remedies and seek summary judgment on that basis.

Mr. Hensley's amended complaint and his filings regarding exhaustion both raise serious doubts as to his physical or mental ability to pursue administrative remedies in the timeframe required by the prison's grievance procedures. Although it is the defendants' legal burden to demonstrate that administrative remedies were available, and despite this Court's order explicitly directing the defendants to address the issue of availability, the defendants have not confronted this fundamental issue. Their motion is therefore denied.

**I. Summary Judgment Standard**

Parties in a civil dispute may move for summary judgment, which is a way of resolving a case short of a trial. *See* Fed. R. Civ. P. 56(a). Summary judgment is appropriate when there is no genuine dispute as to any of the material facts, and the moving party is entitled to judgment as a

matter of law. *Id.*; *Pack v. Middlebury Comm. Schs.*, 990 F.3d 1013, 1017 (7th Cir. 2021). A "genuine dispute" exists when a reasonable factfinder could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "Material facts" are those that might affect the outcome of the suit. *Id.*

When reviewing a motion for summary judgment, the Court views the record and draws all reasonable inferences from it in the light most favorable to the nonmoving party. *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 572–73 (7th Cir. 2021). It cannot weigh evidence or make credibility determinations on summary judgment because those tasks are left to the fact-finder. *Miller v. Gonzalez*, 761 F.3d 822, 827 (7th Cir. 2014). The Court is required to consider only the materials cited by the parties, *see* Fed. R. Civ. P. 56(c)(3); it is not required to "scour the record" for evidence that is potentially relevant. *Grant v. Trustees of Indiana Univ.*, 870 F.3d 562, 573–74 (7th Cir. 2017).

"[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[T]he burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Id*. at 325.

**II. Prison Litigation Reform Act and Exhaustion of Administrative Remedies**

On a motion for summary judgment, "[t]he applicable substantive law will dictate which facts are material." *National Soffit & Escutcheons, Inc., v. Superior Sys., Inc.*, 98 F.3d 262, 265 (7th Cir. 1996) (citing *Anderson*, 477 U.S. at 248). In this case, the substantive law is the Prison

Litigation Reform Act (PLRA), which requires that a prisoner exhaust available administrative remedies before suing over prison conditions. 42 U.S.C. § 1997e(a). "[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002) (citation omitted).

"To exhaust administrative remedies, a prisoner must comply strictly with the prison's administrative rules by filing grievances and appeals as the rules dictate." *Reid v. Balota*, 962 F.3d 325, 329 (7th Cir. 2020) (citing *Woodford v. Ngo*, 548 U.S. 81, 90–91 (2006)). A "prisoner must submit inmate complaints and appeals 'in the place, and at the time, the prison's administrative rules require.'" *Dale v. Lappin*, 376 F.3d 652, 655 (7th Cir. 2004) (quoting *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002)).

"Because exhaustion is an affirmative defense," the defendants face the burden of establishing that "an administrative remedy was available and that [Mr. Hensley] failed to pursue it." *Thomas v. Reese*, 787 F.3d 845, 847 (7th Cir. 2015). "[T]he ordinary meaning of the word 'available' is 'capable of use for the accomplishment of a purpose,' and that which 'is accessible or may be obtained.'" *Ross v. Blake*, 578 U.S. 632, 642 (2016) (internal quotation omitted). "[A]n inmate is required to exhaust those, but only those, grievance procedures that are capable of use to obtain some relief for the action complained of." *Id.* (internal quotation omitted).

## III. Facts

Mr. Hensley's original complaint, filed December 8, 2023, states:

> Wabash Valley Correctional Employees violated my rights. Right violated was my Right to do prossess. My Right for pretection and covering it up. *I was attacked on the P-Dorm Housing 100-200 wing.* Out in the day room the video camars can prove. I was in cell 224 End cell top rang. I even filed complaints when the day I was attacked. I beleave my Grievance Complaint was throneout into the trash! I am

> being told know I have to Give the time dates and yeas this happened. And they are awair for my memory loss.
>
> This happened and *all I can remember is this happed the last time I was in P-House 100-200 rang.* And the wabash valley correctional facility is covering this up, for a year or soon now.
>
> I was finally able to Get a Grievenc complaint form repley back and sent out. Thanks to caseworke Ms. Melc. CCU counsler for doing her Job right.
>
> *I was attack by other inmates on the range of P-Dorm Houseng 100-200.* And the officer at Wabash valley correctional facility. Just Let it happened did Nothing and they been covern it up. For month maybe a year I can not remember.

Dkt. 1 at 2–3 (errors in original; emphases added).

The Court issued process to the Warden of Wabash Valley Correctional Facility and allowed Mr. Hensley to undertake discovery for the limited purpose of identifying proper defendants and amending his complaint. Dkt. 16. Mr. Hensley filed his amended complaint on May 13, 2024. Dkt. 25. It states:

> Sergeant Cobb and CO Sanacoucie violated my rights. *I was being attacked by a inmate in G Housing cell 222 and two others inmates stood outside the window watching.* And sergeant cobb stood in the controll box watching and officer Sanacoucie was on the rang floor did nothing to stop it. I inmate Plaintiff James Michael Hensley JR ended up in the hospital with Head injurys. This was around October 2022. You will see all of This on camara. *And just to have this on the recorded, I filed my first Grivance because I was attacked in P-Housing 100-200 rang on the rang Floor and the officer never interven and been covering it up.* Thats on videotape. I some How ended up in cell 121 ended up on the Floor and the officers help closed the cell door.
>
> I suffer From HeadacHs memory-loss Blackouts, PTSD, and Paranoia. From these Head injury.
>
> *I was told by CO Sanacoucie that he was notifed by Sergeant Cobb thier was an issue in cell 222 G-Housing. But Nethier partys did anything to stop it.* I ended up in the hospital with Head injury. You will see all of this on videotap. A report was filed.

Dkt. 25 at 2–3 (errors in original; emphases added).

Taken together, Mr. Hensley's pleadings indicate that he was seriously injured in an attack at WVCF and suffered memory loss. As of late 2023, when he filed his original complaint, he believed the attack took place in P Dorm and could not identify the officers involved. He completed discovery in 2024, identified Sergeant Cobb and Officer Sanacoucie as proper defendants, and was informed that the incident took place in G Dorm.

The Indiana Department of Correction (IDOC) maintains an Offender Grievance Process, which is an administrative remedy program designed to allow inmates "to express complaints and topics of concern for the efficient and fair resolution of legitimate offender concerns." Dkt. 52-2 at § II. Inmates can use the grievance process to resolve concerns about "[a]ctions of individual staff, contractors, or volunteers" and "concerns relating to conditions of care or supervision within the" IDOC. *Id.* at § IV(A).

To exhaust the grievance process's remedies, an inmate must complete four steps. First, the inmate must attempt to resolve his concern informally. *Id.* (formal grievance must follow "unsuccessful attempts at informal resolutions"). Second, if the inmate is unable to achieve a satisfactory resolution informally, he must submit a formal grievance to the grievance specialist. *Id.* at § X. Third, if the inmate is dissatisfied with the grievance specialist's response, he must submit an appeal to the grievance specialist, who will transmit the appeal to the warden or the warden's designee. *Id.* at § XI. Fourth, if the inmate is dissatisfied with the warden's response, he must submit a second appeal to the IDOC's grievance manager. *Id.* at § XII.

When the prison staff receives a formal grievance, it may accept the grievance, investigate, and issue a response, or it may reject the grievance as deficient. *Id.* at § X. Depending on the defect, an inmate may revise and resubmit a rejected grievance. *Id.* But an inmate may not appeal a

rejected grievance. Rather, an inmate can only appeal after the prison staff issues a formal response or if 20 business days pass without a response. *Id.* at §§ X(C), XI.

The IDOC has no record of any formal grievances submitted by Mr. Hensley between October 2022 (when he allegedly was attacked) and March 16, 2023. Dkt. 52-3.

In October 2023, before Mr. Hensley filed his complaint, he submitted a grievance that was assigned number 23-162504. *Id.* at 1; dkt. 46-1 at 6–9. Like his complaint, the grievance states that he was attacked in P Dorm and that officers failed to intervene. Dkt. 46-1 at 7–9. The grievance specialist rejected Mr. Hensley's grievance on grounds that he had not been housed in P Dorm since April 2023 and therefore his grievance was submitted after the ten-business-day limit for formal grievances. *Id.* at 6; dkt. 52-2 at § X.

## IV. Analysis

The defendants seek summary judgment on two grounds: that Mr. Hensley did not pursue any grievances within the ten-business-day deadline, and that the grievance he later pursued does not relate to the incident over which he now sues. But the defendants have not carried their burden of demonstrating that the administrative remedies they argue Mr. Hensley failed to exhaust were available given his head injuries, his hospitalization, and the prison staff's handling of his formal grievance. *See Thomas v. Reese*, 787 F.3d 845, 847 (7th Cir. 2015) ("Because exhaustion is an affirmative defense, the defendants must establish that an administrative remedy was available and that [the plaintiff] failed to pursue it.").

### A. Failure to Timely File Grievances

The defendants first argue that Mr. Hensley failed to pursue any grievances near the time of his alleged attack in October 2022 and that Grievance 23-162504 (filed in October 2023) was untimely because it was filed outside the 10-business day window for initiating a grievance. It is

well settled, however, that remedies are not available to an inmate who is physically or mentally incapable of pursuing them. *See, e.g.*, *Smallwood v. Williams*, 59 F.4th 306 (7th Cir. 2023) (inmate with low IQ scores); *Lanaghan v. Koch*, 902 F.3d 683 688–89 (7th Cir. 2018) (wheelchair-bound inmate with severe physical limitations); *Hurst v. Hantke*, 634 F.3d 409, 411–12 (7th Cir. 2011) (inmate incapacitated by stroke).

The defendants' argument that Mr. Hensley failed to timely pursue grievances is, at best, incomplete. It is the defendants' burden to prove that administrative remedies were available to Mr. Hensley—not his burden to prove that they were unavailable. The defendants should have been aware that availability would be a critical issue when Mr. Hensley alleged in his pleadings that he was hospitalized following the attack and suffered severe head injuries, including memory loss. If they were not, they certainly should have been aware of the issue when Mr. Hensley responded to their assertion of the exhaustion defense—before they ever filed their motion—with a medical record indicating he was so severely injured he could not remember his name or birthday after the incident. Dkt. 46-1 at 5.

If the law did not make it clear that the defendants faced the burden of proving that remedies were available, the Court's order regarding development of the exhaustion defense did:

> Furthermore, if a dispositive motion is filed, it is the movant's burden to prove both that the administrative remedy process was available to the plaintiff and that he or she failed to utilize it. *See Thomas v. Reese*, 787 F.3d 845, 848 (7th Cir. 2015); *Kaba v. Stepp*, 458 F.3d 678, 686 (7th Cir. 2006). Thus, if the plaintiff responds with evidence that the administrative remedy process was unavailable, the movant may and should consider whether selecting one of the other two options outlined above is the appropriate course—that is, conceding that a *Pavey* hearing is necessary or withdrawing their affirmative defense. Alternatively, the reply must directly confront the plaintiff's evidence regarding availability and explain why summary judgment is warranted despite that evidence.

Dkt. 44 at 2. Mr. Hensley provided evidence raising doubts as to the availability of the administrative process before the defendants ever filed their motion, and yet the defendants do not address the question of availability or Mr. Hensley's hospitalization and head injuries at all.

Perhaps the defendants did not have all the evidence they needed to demonstrate that Mr. Hensley was capable of pursuing grievances in the weeks after his attack and hospitalization. For that reason, the Court offered the defendants an opportunity to complete discovery on that subject:

> Discovery on the issue of exhaustion is permitted and shall be completed prior to the resolution of the motion for summary judgment. No discovery shall be permitted after a ruling on the motion for summary judgment absent good cause.

*Id.* The defendants could have carried their burden to show that administrative remedies were available to Mr. Hensley despite his head injury by, for example, obtaining his medical records, or deposing him regarding his capabilities following his hospitalization.

The defendants' related argument that Mr. Hensley's October 2023 grievance was untimely fails for the same reason. Although there can be no dispute that Mr. Hensley submitted that grievance well after the deadline, the defendants faced the burden of demonstrating that he was capable of using the grievance process before the deadline expired. They have not even attempted to carry that burden, and their failure to do so dooms their summary judgment motion.

**B. Relevance of Grievance 23-162504**

The defendants further argue that Mr. Hensley's claims must be dismissed because Grievance 23-162504 concerns a different incident from the one at the heart of this suit and, in any event, he did not appeal the denial of that grievance. These arguments are not well taken.

The defendants are correct that Grievance 23-162504 describes an attack in P Dorm and that Mr. Hensley's amended complaint describes an attack in G Dorm. But Mr. Hensley also described an attack in P Dorm in his original complaint. Due to his injuries, he was unable to

remember the details of the attack, and he was only able to correctly identify the location of the incident and the parties responsible after the Court permitted him to undertake discovery. The amended complaint and the grievance describe the same incident. The details in the descriptions simply differ because Mr. Hensley had more information available when he wrote his amended complaint. In fact, he acknowledges the discrepancy in his amended complaint. Dkt. 25 at 2–3. The defendants' assertion that the grievance concerns a different incident reflects, at best, ignorance of the procedural history in this case or, at worst, bad faith.

The defendants also are correct that Mr. Hensley did not pursue appeals from the denial of Grievance 23-162504, but the grievance policy itself rendered such appeals unavailable. The grievance specialist rejected the grievance as untimely, and the grievance policy offers no further remedies to an inmate whose grievance is rejected as untimely. It is not as though Mr. Hensley could travel back in time and file the grievance more promptly.

## V. Conclusion

The defendants' motion for summary judgment is **denied** because they have not carried their burden of showing that Mr. Hensley failed to exhaust *available* administrative remedies. To the extent the defendants argue Mr. Hensley failed to exhaust the process he initiated in October 2023, the appellate phases of the process were unavailable to him under the grievance policy once the grievance specialist rejected his grievance as untimely. And the defendants have not carried their burden of demonstrating that Mr. Hensley was capable of pursuing grievances earlier.

Ordinarily, when a summary judgment motion on the exhaustion defense is denied, the Court must convene an evidentiary hearing because "discovery with respect to the merits should be deferred until the issue of exhaustion is resolved." *Pavey v. Conley*, 544 F.3d 739, 742 (7th Cir. 2008). But no hearing is warranted in this case. To prove their affirmative defense, either the

defendants will need to rely on evidence of unavailability that they could have presented in support of their summary judgment motion, or they will need to obtain such evidence in discovery. But the Court ordered the defendants to complete such discovery *before* summary judgment motions were resolved. Dkt. 44 at 2 ("Discovery on the issue of exhaustion is permitted and shall be completed prior to the resolution of the motion for summary judgment. No discovery shall be permitted after a ruling on the motion for summary judgment absent good cause.")

"The purpose of a *Pavey* hearing is to resolve disputed factual questions that bear on exhaustion, including what steps were taken and whether the futility exception might apply." *Wagoner v. Lemmon*, 778 F.3d 586, 591 (7th Cir. 2015). It is not to give the defendants a second chance to prove an affirmative defense with evidence and argument that were available from the outset. The defendants will therefore have **fourteen days** from the issuance of this order to **show cause** why the Court should not grant summary judgment in Mr. Hensley's favor on the exhaustion issue and proceed to merits discovery. *See* Fed. R. Civ. P. 56(f)(1). Alternatively, the defendants may withdraw the exhaustion defense. Mr. Hensley will have 28 days following the defendants' response to file any reply.

**IT IS SO ORDERED.**

Date: 5/12/2025

JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

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