

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

April 12, 2022

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

MICHAEL SIMPSON,

Plaintiff - Appellant,

v.

JIMMY MARTIN, in official capacity as
Warden/Facility Head/Leader of All North
Fork Prison Employees/Staff; PAULA
BEATHA, in official capacity as North
Fork Prison’s Law Library Supervisor;
SHIRLEY MAY, Prison’s CHSA, in her
official capacity; CORE CIVIC;
JOHN/JANE DOE, Oklahoma Department
of Corrections Inmate Records/Files
Monitor/Manager, in the official position;
JOHN/JANE DOE, Oklahoma Department
of Corrections Inmate Trust Fund Accounts
Inmate Accounts Manager, in the official
capacity,

Defendants - Appellees.

No. 21-6104
(D.C. No. 5:20-CV-00985-C)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **PHILLIPS, MURPHY, and EID**, Circuit Judges.**

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Michael Laroy Simpson, an inmate at the Oklahoma Department of Corrections, filed this pro se civil rights appeal, alleging that his constitutional rights were violated by a number of named defendants: Jimmy Martin, Warden of North Fork Correctional Center (“NFCC”); Paula Beatha, Law Library Supervisor; Dr. Shirley May, Correctional Health Services Administrator (CHSA)/Leader at NFCC; Leon Wilson, Oklahoma Department of Corrections’ (“ODOC”) Comptroller of Offender Banking Services; Tina Petete, ODOC’s Sentence Administration Records Coordinator; John/Jane Doe,¹ ODOC Inmate Accounts Manager; John/Jane Doe, ODOC Inmate Records/Files Manager; and Core Civic, NFCC building owner (collectively, “Defendants”). [R. at 23–24.] Upon the Defendants’ motion, and the magistrate judge’s report and recommendation, the district court granted Defendants’ motion for summary judgment, finding no dispute of material fact that Simpson failed to exhaust administrative remedies. We affirm.

I.

Simpson’s amended complaint asserts that his constitutional rights were violated while he was housed at the NFCC in Sayre, Oklahoma, between June 2019 and November 2020. [R. at 23.] Simpson’s allegations were clearly laid out by the magistrate judge in a thirty-page report and recommendation. [See R. at 574–78.] In short, Simpson alleges that Warden Martin retaliated against him for filing grievances, that Dr. May was deliberately indifferent to his medical needs, that Beatha hindered his

¹ Simpson named two Jane/John Doe individuals as responsible for managing inmate trust accounts and managing inmate records/files. [R. at 575.] Defendants have identified these individuals as Leon Wilson and Tina Petete, respectively. Defense counsel previously entered an appearance for each of them. [R. at 575 n.2.]

ability to complete the exhaustion process, that Wilson unlawfully removed money from his inmate trust account, that Petete made false entries in his inmate file, and that Core Civic failed to implement required COVID-19 safety mandates. [R. at 575–77.]

Under the Prison Litigation Reform Act (“PLRA”), an inmate cannot bring an action “with respect to prison conditions under [§] 1983 . . . until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a); *see also Jones v. Bock*, 549 U.S. 199, 211 (2007) (finding that “exhaustion is mandatory under the PLRA”). At NFCC, Simpson was required to follow the ODOC Inmate/Prisoner Grievance Process, which requires an inmate to: (1) submit a Request to Staff within seven days of the incident; (2) submit a Grievance to the facility head, if the initial request response is unfavorable, within fifteen days of the response; and (3) submit an appeal to the Administrative Review Authority, if the Grievance response is unfavorable, within fifteen days after receipt of that response. [See R. at 582–83.] Additionally, only one issue or incident is allowed on any one Request to Staff, Grievance, or appeal. [See R. at 582–83.]

II.

Summary judgment may only be granted when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A dispute is “genuine” if a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). *Id.* “At [this] stage, a complainant cannot rest on mere allegations, but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion

will be taken to be true.” *Burke v. Utah Transit Auth. & Local*, 462 F.3d 1253, 1258 (10th Cir. 2006) (internal quotation marks omitted). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal quotation marks omitted).

III.

The magistrate judge thoroughly analyzed each individual claim in a thirty-page report and recommendation, and the district court adopted the recommendation and granted summary judgment on all claims for failure to exhaust administrative remedies. [R. at 574; R. at 663.] Simpson appeals this decision, but his arguments are without merit and not directed toward the district court’s grounds for finding that he failed to exhaust administrative remedies. We construe pro se pleadings liberally, but our role is not to act as a pro se litigant’s advocate, and appellants must “sufficiently raise all issues and arguments on which they desire appellate review in their opening brief.” *Becker v. Kroll*, 494 F.3d 904, 913 n.6 (10th Cir. 2007); *see also Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

Here, we agree with the district court that Simpson failed to exhaust his administrative remedies. Each one of Simpson’s claims involved one or more procedural errors that controverted the proper remedy outlined by the ODOC Inmate/Prisoner Grievance Process. In a majority of Simpson’s claims, Simpson failed to file the required Grievance to the facility head after receiving an unfavorable response to a Request to Staff. *See, e.g.*, R. at 590–93 (requests related

to eye care, dental treatment, and lack of COVID-19 testing); *id.* at 596–98 (requests related to hindering his ability to exhaust his remedies, reading his legal mail, and barring law library access). When Simpson did file a Grievance or appeal, he failed to name the appropriate reviewing authority, *see id.* at 265 (requests involving housing safety), failed to file within the proper timeline, *see id.* at 593–96, 598–601 (requests related to inmate trust fund), or included more than one issue or incident in that Grievance, *see id.* at 598–601 (requests involving inmate personnel file).² Therefore, because we find that Simpson failed to exhaust his administrative remedies, we affirm the district court’s grant of summary judgment as to all defendants. *See Calbart v. Sauer*, 504 F. App’x 778, 784 (10th Cir. 2012).

Simpson has also moved for leave to proceed in forma pauperis. Because Simpson has shown his inability to pay and the existence of a nonfrivolous argument, and because Simpson does not have any previously issued strikes under 28 U.S.C. § 1915(g), we grant his motion for leave to proceed in forma pauperis. However, we note that because the PLRA applies to this appeal, Simpson must continue making partial payments until the entire filing fee has been paid. *See* 28 U.S.C. § 1915(b)(1).

Finally, all other pending motions are denied as moot.

Entered for the Court

Allison H. Eid
Circuit Judge

² Simpson also failed to file any appeal regarding the allegations against Core Civic. [*See* R. at 601–02.]