

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Tyrone R. Williams,

Plaintiff,

vs.

Sheriff Dart, *et al.*,

Defendants.

20 CV 05639

Judge Martha M. Pacold

Magistrate Beth W. Jantz

**DEFENDANT SHERIFF THOMAS DART'S (IN HIS OFFICIAL CAPACITY)
RULE 56 MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION
FOR SUMMARY JUDGMENT ON THE LIMITED ISSUE OF EXHAUSTION
PURSUANT TO PAVEY V. CONLEY**

Defendant, Sheriff Thomas Dart (“Defendant Dart”),¹ by his attorney, KIMBERLY M. FOXX, through her Assistant State’s Attorney, Jorie R. Johnson, and pursuant to Federal Rules of Civil Procedure 56 and *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008) (“*Pavey*”), moves this Honorable Court for summary judgment on the limited issue of exhaustion and to dismiss this lawsuit.

INTRODUCTION

Plaintiff, Tyrone R. Williams (“Plaintiff”), a former individual in custody at the Cook County Department of Corrections (“CCDOC”), filed his Third Amended Complaint in this matter on July 27, 2022. In that Complaint, Plaintiff alleges that the failure of Defendant Dart to implement and enforce policies for social distancing, hand sanitizing, and the wearing of face masks by detainees was a cause of Plaintiff’s COVID-19 infection, and as a result, he suffered physical harm.

¹ Because Defendant Dart only brings this motion under *Pavey*, he respectfully requests to reserve the right to file a substantive motion for summary judgment at a later date should that be necessary.

Defendant Dart now moves this Honorable Court for summary judgment based on Plaintiff's failure to exhaust administrative remedies provided to him by CCDOC, as required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997(e)a. Here, Plaintiff failed to appeal the grievance he submitted on December 9, 2020 where he complained that the CCDOC did not help to prevent him from contracting COVID-19 knowing he had other medical conditions which made him high risk for COVID-19. (SOF at ¶27.) Similarly, Plaintiff failed to submit a compliant grievance complaining about any policy or widespread practice regarding social distancing, hand sanitizing, and the wearing of face masks by detainees or staff members. Therefore, Defendant Dart is entitled to judgment pursuant to *Pavey*.

PROCEDURAL BACKGROUND

On November 30, 2020, the Court issued an order under 28 U.S.C. § 1915A dismissing Plaintiff's Complaint for failure to state a claim but gave Plaintiff the opportunity to amend his complaint by January 12, 2021. (Dkt. 5.) On August 24, 2021, Plaintiff filed his First Amended Complaint naming Defendant Dart and Executive Director Amanda Gallegos ("Director Gallegos"). (Dkt. 8). On the same day, the Court issued an order under 28 U.S.C. § 1915A order permitting Plaintiff to proceed with his claim against Defendant Dart and Director Gallegos. (Dkt 7.) Defendant Dart filed a motion to dismiss Plaintiff's First Amended Complaint, but Plaintiff responded to the motion with a Second Amended Complaint, without leave of Court. (Dkt. 20.) The Court later dismissed Plaintiff's Second Amended Complaint and denied Defendant's Motion to Dismiss Plaintiff's First Amended Complaint as moot in light of Plaintiff's newly filed pleading. (Dkt. 21.)

Thereafter, the Court appointed Plaintiff an attorney, who filed a renewed Second Amended Complaint on July 28, 2022 naming Defendants Dart, Cook County, Illinois, Nancy

Erasga, Irene Modunkwu, Laura Nunez, James Shiny, Darrin Sopczak, and Tonnisa White. (Dkt. 36.) Plaintiff alleged that Defendants Dart and Cook County failed to implement and enforce policies for social distancing, hand sanitizing, and the wearing of face masks, which was a cause of Plaintiff's coronavirus infection which he contracted in December of 2020. (*Id.* at pg. 2.) He further alleged that Defendants Nancy Erasga, Irene Modunkwu, Laura Nunez, James Shiny, Darrin Sopczak, and Tonnisa White refused to provide him with his prescribed medication because of their fear of being in proximity to a person infected with coronavirus while Defendant Dart was not enforcing the announced policies for social distancing, hand sanitizing, and the wearing of face masks by detainees and correctional staff. (*Id.* at pg. 4.)

On July 27, 2023, Plaintiff filed a Third Amended Complaint naming only Defendant Dart and Cook County². Plaintiff dismissed his claims against all of the previously named individual medical defendants from his Second Amended Complaint. In his Third Amended Complaint, Plaintiff alleges that in early 2020, Defendant Dart became aware of novel virus known as COVID-19 and the significant risks it posed to the health and wellbeing of detainees at CCDOC. (Dkt. 76 ¶6.) Defendant Dart learned about guidelines issued by the Centers for Disease Control to prevent the spread of the virus, which included such preventative measures like social distancing, hand sanitizing, and the wearing of face masks by detainees and correctional staff members. (Dkt. 76 ¶7.) Plaintiff further alleges that Defendant Dart adopted, but did not implement or enforce, policies for social distancing, hand sanitizing, and the wearing of face masks by detainees and correctional staff. (Dkt. 76 ¶8.) Plaintiff then became infected with COVID-19 in December of 2020 due to the alleged failure of Defendant Dart to implement and enforce policies for social

² Defendant Cook County is represented by Separate Counsel ASA Michael Gorman. This present motion is not being brought on behalf on this Defendant, as they are only named in Plaintiff's Third Amended Complaint for Indemnification purposes.

distancing, hand sanitizing, and the wearing of face masks by detainees. (Dkt. 76 ¶10.) Plaintiff contends the failure of Defendant Dart to implement and enforce policies for social distancing, hand sanitizing, and the wearing of face masks by detainees was a cause of his coronavirus infection. (Dkt. 76 ¶12.)

STATEMENT OF FACTS

I. Plaintiff at CCDOC.

Plaintiff is an individual who was previously in custody and housed at CCDOC. Plaintiff entered CCDOC on June 8, 2020. (SOF at ¶ 8.) From June 8, 2020 to October 29, 2021 Plaintiff was housed in different divisions of CCDOC including Division 6 Tier 2D Cell 8 Bed 1 from October 14, 2020 to December 3, 2020. (SOF at ¶ 9.) Then from December 17, 2020 to December 28, 2020, Plaintiff was housed Division 6 Tier 1L Cell 14 Bed. (SOF at ¶10.) During his time at CCDOC, Plaintiff was assigned the booking number 20200608070. (SOF at ¶11.)

Plaintiff was aware of how to file a grievance and the grievance process at the Jail. (SOF at ¶13.) Plaintiff submitted six grievances under the booking number 20200608070. (SOF at ¶12.) In the beginning of December of 2020, Plaintiff was housed on Division 6, Tier 2D Cell 8 Bed 1. (SOF at ¶26.) On December 9, 2020, while Plaintiff was currently housed in Division 8 RTU Tier 3F, he submitted a grievance with control number 2020x17496. (SOF at ¶27.) Plaintiff's grievance 2020x17496 complained that when he was previously housed in Division 6 Tier 2D, CCDOC did not help to prevent him from contracting COVID-19, even though he had other medical conditions which made him high risk for COVID-19. (*Id.*) Plaintiff further stated that it was an injustice to him and others who had the same issue. (*Id.*) On December 29, 2020, Plaintiff received a response to the grievance with control number 2020x17496. (SOF at ¶28.) Plaintiff never appealed the grievance with control number 2020x17496. (SOF at ¶29.)

On December 14, 2020, while Plaintiff was currently housed in Division 8 RTU Tier 3F, he submitted a grievance that was deemed non-compliant with the control number NC-202005392. (SOF at ¶30.) Plaintiff's non-complaint grievance NC-202005392 stated that since his arrest and placement in CCDOC, he was housed in a cell with multiple different persons, making it impossible for him to socially distance himself from others. (*Id.*) Plaintiff continued to state that he did not have access to enough quality or enough quantity of personal protective equipment and cleaning supplies to protect himself from contracting COVID-19. (*Id.*) As a result, he tested positive and was diagnosed with COVID-19 on December 2, 2020. (*Id.*) On December 17, 2020, Plaintiff received a response to the non-complaint grievance with control number NC-202005392. (SOF at ¶31.) The response stated that grievance was deemed non-compliant due to the grievance issue being a repeat submission collected within the last 15 calendar days, specifically related to submitted grievance #2020x17496. (*Id.*) Plaintiff's non-compliant grievance NC-202005392 was still forwarded to the Division 6 Superintendent concerning his issues although the grievance was deemed non-compliant. (SOF at ¶32.)

II. CCDOC Grievance Policies.

Upon entering CCDOC, IIC's are informed through the Inmate Rules and Regulations (also known as the Inmate Handbook) about the grievance procedure process. (*See* Defendant Dart's Statement of Material Facts, ("SOF") at ¶ 16.) IIC's at CCDOC are advised to complete an Inmate Grievance Form if the IIC believes that he or she has an issue concerning one of the listed topics in Chapter 7 of the Inmate Handbook. (SOF at ¶ 17.) Additionally, IIC's are informed that they will need to fill out and submit an Inmate Grievance Form within fifteen (15) days of the alleged grievable offense, and to appeal the grievance response within fifteen (15) days of receiving the response, in order to exhaust administrative remedies. (SOF at ¶ 18.) Filing an

appeal of a grievance response is required in order to exhaust an IIC's administrative remedies. (*Id.*)

In addition to information in the Inmate Handbook, grievance forms themselves also contain a description of the grievance process as well as an instruction that appeals must be taken to exhaust administrative remedies. (SOF at ¶ 20.) IIC's are advised that grievance forms are available on each living unit, or can be requested from a Correctional Rehabilitation Worker (“CRWs”) assigned to the tiers/units. (SOF at ¶ 21.) An IIC may request a grievance form from any sworn member or any IIC Services staff member. (*Id.*) If a form is not available, an IIC may also use blank paper or any other type of paper to file a grievance. (*Id.*)

Individuals in custody (hereafter “IIC”), are instructed to hand the completed grievance form directly to the CRW or a Correctional Supervisor when he/she makes their daily rounds. (SOF at ¶ 22.) The Sheriff has policies and procedures regarding the grievance process as it pertains to both IIC's and staff members. (SOF at Ex. F and Ex. G.) Between March 22, 2020, and August 2, 2021, because of the COVID-19 pandemic, the CCDOC - IIC Grievance Procedure was altered to reflect safety precautions necessary during that time period. Individuals in custody still were required to fill out and submit an IIC Grievance Form within fifteen (15) days of the alleged grieved issued, and then to appeal the grievance response, within 15 days from receipt in order to exhaust administrative remedies. (SOF at ¶ 25.) Filing an appeal of a grievance response was still required in order to exhaust an IIC's administrative remedies. However, the grievance responses and appeal responses were returned to IIC through inter-office mail delivered to each individual through their tier/living unit correctional officer or correctional rehabilitation worker (hereafter “CRW”). (*Id.*) This was done in order to minimize contact and exposure when the virus was spreading quickly. (*Id.*)

STANDARD OF REVIEW

“Summary judgment is appropriate when, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine issue of material fact that must be decided by a jury.” *Knox v. Smith*, 342 F.3d 651, 656 (7th Cir. 2003). Neither the existence of some alleged factual dispute, nor the existence of some metaphysical doubt as to the material facts, is sufficient to defeat a motion for summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, the nonmoving party must go beyond the pleadings, and by his own affidavits, or by the “depositions, answers to interrogatories, and admissions on file,” designate “specific facts showing that there is a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). The court need not draw inferences for Plaintiff “that are supported by only speculation or conjecture.” *Fischer v. Avanade, Inc.*, 519 F. 3d 393, 401 (7th Cir. 2008).

ARGUMENT

I. Plaintiff did not appeal the submitted grievance from December 9, 2020 regarding claims alleged in his operative complaint.

The record is clear that Plaintiff did not exhaust his administrative remedies as required by the PLRA. The purpose of the PLRA is “[to] afford corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case.” *Porter v. Nussle*, 534 U.S. 516, 525 (2002). The PLRA requires an inmate to exhaust administrative remedies before initiating a federal civil rights lawsuit. 42 U.S.C. § 1997e(a) (“No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility unless such administrative remedies as are available are exhausted.”). Thus, if a correctional facility has an internal

administrative grievance system through which an inmate can seek to correct an issue, the inmate must utilize that system before filing suit in federal court. *See, e.g., Chambers v. Sood*, 956 F.3d 979, 983 (7th Cir. 2020). This means that the inmate must file both the grievance and appeal in accordance with facility procedures. *See Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002) (explaining that, to exhaust administrative remedies, inmate must submit grievances and appeals at time and in manner specified by institutional rules).

The PLRA requires proper exhaustion; that is, before filing a civil rights lawsuit, the inmate must file a grievance utilizing the applicable procedural rules. *Woodford v. Ngo*, 548 U.S. 81, 90, 93 (2006). The applicable procedural rules are defined not by the PLRA, but by the prison's grievance process itself. *Jones v. Bock*, 549 U.S. 199, 218 (2007). The Seventh Circuit has taken a “strict compliance” approach to exhaustion. “A prisoner must properly use the prison's grievance process. If he or she fails to do so, the prison administrative authority can refuse to hear the case, and the prisoner's claim can be indefinitely unexhausted.” *Dole v. Chandler*, 438 F. 3d 804, 808 (7th Cir. 2006). “To exhaust remedies, a prisoner must file complaints and appeals in the place, and at the time, the prison's administrative rules require.” *Lewis v. Washington*, 300 F. 3d 829, 833 (7th Cir. 2002). An inmate's ignorance of the proper grievance procedure does not excuse non-compliance with that procedure. *McSwain v. Schrubbe*, 382 Fed. Appx. 500, 503 (7th Cir. 2010). “When a prisoner causes the unavailability of the grievance process by simply not filing in a timely manner, the process is not unavailable, but rather forfeited.” *Twitty v. McCoskey*, 226 Fed. Appx. 594, 596 (7th Cir. 2007) An inmate forfeits the grievance process when he causes the unavailability of a remedy by not filing or appealing a grievance. *Perez v. Fenoglio*, Case No. 11-CV-819, 2016 U.S. Dist. LEXIS 115621, at *16 (S.D. Ill. July 20, 2016).

For this reason, a determination of whether a prisoner has exhausted all administrative remedies should be decided at the outset of the litigation. *Pavey*, 544 F.3d at 740; *see also Perez v. Wisconsin Dep't of Corrections*, 182 F. 3d 532, 535 (7th Cir. 1999) (“a suit filed by a prisoner before administrative remedies have been exhausted must be dismissed; the district court lacks discretion to resolve the claim on the merits, even if the prisoner exhausts intra-prison remedies before judgment”).

In *Pavey*, the Seventh Circuit set forth the following guidelines for such an inquiry:

- (1) The district judge conducts a hearing on exhaustion and permits whatever discovery relating to exhaustion (and only to exhaustion) he deems appropriate.
- (2) If the judge determines that the prisoner did not exhaust his administrative remedies, he will then determine whether (a) the plaintiff has unexhausted remedies, and so he must go back and exhaust; (b) or, although he has no unexhausted remedies, the failure to exhaust was innocent (as where prison officials prevent a prisoner from exhausting his remedies), in which event he will be allowed to go back and exhaust; or (c) the failure to exhaust was the prisoner's fault, in which event the case is over.
- (3) If and when the judge determines that the prisoner has properly exhausted his administrative remedies, the case will proceed to pretrial discovery, and if necessary, a trial, on the merits; and if there is a jury trial, the jury will make all necessary findings of fact without being bound by (or even informed of) any of the findings made by the district judge in determining that the prisoner had exhausted his administrative remedies. *Pavey v. Conley*, 544 F.3d at 742.

The Supreme Court held that proper exhaustion requires that inmates “complete the administrative review process in accordance with the applicable procedural rules[.]” *Woodford*,

548 U.S. at 88. The level of detail necessary to comply with the grievance procedures may vary from system to system—but it is the detention facility’s requirements, and not the PLRA, that define the boundaries of proper exhaustion. *Id.*

At CCDOC, exhausting administrative remedies is accomplished by following the grievance procedure, which is available to all IIC’s at the CCDOC. (SOF ¶16.) The grievance procedure is outlined in the inmate rules and regulations handbook, and the grievance and appeal procedure are written on the grievance forms themselves. (SOF ¶¶16 - 20.) An IIC must submit a grievance within (15) days of the alleged violation of which they are complaining, and upon receiving a response from the jail, must then file an appeal within (15) days of receipt. (SOF ¶18.) In the instant case, Plaintiff never appealed his grievance submitted on December 9, 2020 regarding complaints that when he was previously housed in Division 6 Tier 2D CCDOC did not help to prevent him from contracting COVID-19 knowing he had other medical conditions which made him high risk for COVID-19. (SOF at ¶ 27.) Plaintiff admitted the grievance process was available to him the entire time he was incarcerated at CCDOC from June 8, 2020 to October 29, 2021. (SOF at ¶12.) Plaintiff was aware of how to file a grievance and the grievance process at CCDOC. (SOF at ¶13.) Plaintiff did not have any problems with reading comprehension or the ability to express his thoughts in writing while he incarcerated at CCDOC. (SOF at ¶14.) Moreover, Plaintiff had previously appealed using the CCDOC grievance system prior to December of 2020, so he was aware of how to appeal a grievance. (SOF at Ex. C at bates stamped Williams,Tyrone-CCSAO-20CV5639-001599.) Simply put, the grievance Plaintiff submitted on December 9, 2020 failed to comply with the CCDOC grievance process regarding exhaustion of his administrative remedies because he failed to appeal his grievance. Therefore, Plaintiff failed to exhaust his administrative remedies regarding Defendant Dart, and all claims against them should

be dismissed.

As to the grievance Plaintiff submitted about Defendant Dart, on December 14, 2020, it was deemed non-compliant due to the grievance issue being a repeat submission collected within the last 15 calendar days, specifically related to submitted grievance #2020x17496. (SOF at ¶31.) On December 14, 2020, while Plaintiff was currently housed in Division 8 RTU Tier 3F, he submitted a grievance that was deemed non-compliant with the control number NC-202005392. (SOF at ¶30.) Plaintiff's non-complaint grievance stated since that his arrest and placement in CCDOC, he was housed in a cell with multiple different persons making it impossible for him to socially distance himself from others. Plaintiff continued to state that he did not have access to enough quality or enough quantity of personal protective equipment and cleaning supplies to protect himself from contracting COVID-19 (*Id.*) As a result, he tested positive and was diagnosed with COVID-19 as of December 2, 2020. (*Id.*)

As mentioned above, Defendant Dart has a formalized grievance procedure that was available to Plaintiff while he was detained at CCDOC. The grievance procedure required Plaintiff to complete a grievance form regarding the issue he was grieving and turn in the form to either a CRW or a Sergeant/Lieutenant to be submitted. (SOF ¶¶16-22.) Plaintiff frequently submitted grievances about issues he had at the CCDOC and had previously appealed a grievance successfully. (SOF at Ex. C at bates stamped Williams,Tyrone-CCSAO-20CV5639-001599.) By Plaintiff's own admissions, he was well aware of the CCDOC grievance process and how to properly submit a grievance and appeal it. (SOF ¶¶13-15.) However, Plaintiff's fatal mistake was when he failed to appeal the grievance with control number 2020x17496 submitted on December 9, 2020, regarding the claims at issue in this Third Amended Complaint and subsequently filed a non-compliant grievance. (SOF ¶29.) The Sheriff's staff members explicitly told Plaintiff, in

writing, that his grievance submitted on December 14, 2020, was deemed non-compliant due to the grievance issue being a repeat submission collected within the last 15 calendar days. (SOF ¶¶31-33.) The inmate rules and regulations handbook outlines the circumstances in which a grievance will be deemed as non-compliant, including repeat submissions collected within the last 15 calendar days pursuant to CCDOC inmate grievance procedures. (SOF at ¶19). The administrative-remedy system was available to Plaintiff based on the plain language of the written instructions and the responses he received to both December 9, 2020, compliant grievance form and the December 14, 2020, non-compliant grievance form. (SOF at Ex. C.)

In sum, the CCDOC provided Plaintiff with an Inmate Handbook, gave him a response to his Grievance allowing him the opportunity to appeal, and had staff available to answer any questions he might ask. (.) These are "reasonable steps" calculated to inform an IIC about his rights to use the grievance process and does not excuse Plaintiff from exhausting the administrative remedies available to him.

Consequently, Plaintiff has failed to exhaust his administrative remedies and this suit should be dismissed. For the above reasons, dismissal of Plaintiff's claims against Defendant Dart for failure to exhaust is warranted.

CONCLUSION

Plaintiff failed to exhaust his administrative remedies because he did not appeal the grievance submitted regarding the claims at issue in this matter. Therefore, Plaintiff's suit must be dismissed due to a failure to exhaust his administrative remedies.

WHEREFORE, Defendant Dart, pursuant to Rule 56, Local Rule 56.1 and *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008), respectfully requests that this Honorable Court: (i) enter judgment in favor of Defendant Dart on the issue of exhaustion; (ii) dismiss Plaintiff's complaint for failure

to exhaust his administrative remedies as required by *Pavey*, and (iii) for any other relief that this Honorable Court deems necessary and just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jorie R. Johnson hereby certify that on December 4, 2023 I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of Illinois Eastern Division by using the CM/ECF system. I certify that in accordance with Fed. R. Civ. P. and LR 5.5 and the General Order on Electronic Case Filing (ECF), the foregoing was served upon all ECF users.

/s/ Jorie R. Johnson
Jorie R. Johnson