

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

TODD MICHAEL CRANE,)
)
 Plaintiff,)
)
 v.) Case No. 4:14-CV-90-RLY-DML
)
 CORPORAL HOWE,)
 NURSE KELLY HOGG, and)
 DR. HOKE,)
)
 Defendants.)

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
FOR PLAINTIFF TODD MICHAEL CRANE**

Plaintiff Todd Michael Crane, by counsel and pursuant to the Court’s January 26, 2016 order following its *Pavey* hearing regarding failure to exhaust administrative remedies, submits the following Proposed Findings of Fact and Conclusions of Law:

Findings of Fact

I. Mr. Crane’s Arrest

1. At all relevant times, Plaintiff Todd Michael Crane (“Mr. Crane”) was a prisoner incarcerated at the Dearborn County Jail (the “Jail”), located at 301 W. High Street in Lawrenceburg, Indiana.
2. Mr. Crane was arrested on March 1, 2014 in Lawrenceburg, Indiana, and was taken to a holding cell at the Jail.
3. At the time that Mr. Crane arrived at the Jail, he suffered from injuries relating to his arrest. In particular, Mr. Crane sustained injuries to his ribs.
4. When Mr. Crane arrived at the prison, he complained to the prison guard, Defendant Corporal Howe, that he was injured and asked to see a doctor. Corporal Howe did not

investigate Mr. Crane's medical injuries himself, and he ignored Mr. Crane's requests for medical attention.

5. Instead, Mr. Crane was placed in a full body restraint in a padded cell, where he spent the evening on a hard floor. During that time he cried out in pain, but did not receive any medical attention. Mr. Crane's restraints were later removed by guards, but Mr. Crane was not seen by any of the Jail's medical staff.

6. Mr. Crane stayed in the holding unit for three days, after which time he was moved to the general inmate housing facility. During his time in the holding unit, he made repeated requests for medical attention.

II. Mr. Crane's Grievances

7. The Jail's Inmate Handbook provides a policy for inmates to file grievances. Section 23.1 provides that "[a]ll complaints or grievances concerning conditions at this facility, its functions or the staff shall be forwarded to the area sergeant." Moreover Section 23.2 provides that "[i]nmates are required to submit complaints in writing within 72 hours of the occurrence of the incident."

8. In addition, the Jail published an additional policy statement relating to grievances, explaining that "[g]rievance[s] shall be settled informally wherever possible."

9. Inmates also have the right to file requests for medical attention. Mr. Crane testified that inmates often use medical requests and grievances interchangeably when a grievance relates to a medical issue.

10. During the hearing, Jail Commander David Hall described the Jail's procedure for processing inmate grievances. Inmates are encouraged to deposit their grievances in a drop box in the facility or to give their grievances directly to a guard. If the grievances are

given directly to a guard, the guard is supposed to deliver the grievances to Jail Commander Hall. Jail Commander Hall reviews grievances to determine if any additional investigation is necessary. Copies of the grievances are then made for the Jail's record, and the grievances are returned to the inmate with notations from the Jail's staff acknowledging receipt and describing any resolution or follow-up actions that need to take place.

11. Jail Commander Hall admitted that he has no way of controlling what happens to grievance forms from the time that they are given to guards to the time that they arrive on his desk for review. Inmates do not receive a carbon copy of their grievances at the time they are filed, and they do not receive acknowledgements of having filed grievances until the grievances are returned with the officers' notations.

12. Jail Commander Hall conceded that if an inmate's grievance were to get lost or destroyed during this interim period, there would be no record of the grievance having ever been filed.

13. Between March 4 and March 22, 2016, Mr. Crane filed several grievances and medical requests relating to his arrest, his rib injuries, and his subsequent denial of medical attention. He did not receive acknowledgments that these grievances or requests had been filed, nor did he receive annotated copies of the grievances or requests back from Jail Commander Hall. These grievances are missing from Mr. Crane's Jail file.

14. In addition to filing formal grievances and medical requests, Mr. Crane orally informed the guards of his grievances. These individuals assured Mr. Crane that they would look into the incidents. However, Mr. Crane was never informed that anyone at the Jail investigated his arrest or his subsequent denial of medical care.

15. In addition, Mr. Crane submitted several other grievances that are missing from his prison file. These missing grievances include, but are not limited to, complaints regarding Mr. Crane's former attorney.

16. Mr. Crane was not examined by the Jail's medical staff until March 19, 2014, when he was seen by Defendant Nurse Kelly Hogg. During that appointment Mr. Crane complained of rib pain relating to his March 1, 2014 arrest. Ms. Hogg prescribed ibuprofen, and advised Mr. Crane to use a warm compress on the injury.

17. The first grievance in Mr. Crane's medical file relating to his March 1, 2014 arrest, his injuries, and his subsequent denial of medical attention is dated May 15, 2014. There are similar grievances in Mr. Crane's file dated May 16, May 19, June 7, June 9, and June 22, 2014. All of these grievances tell a consistent story: That Mr. Crane was brutally beaten during his March 1, 2014 arrest, sustained serious injuries to his ribs, and was subsequently denied medical attention until March 19, 2014. Moreover, the grievances describe how Mr. Crane's requests for an investigation into these incidents had gone unanswered.

III. The Lawsuit

18. On August 12, 2014, Mr. Crane filed a lawsuit in the Southern District of Indiana relating to the Jail's failure to provide him with medical attention for injuries he sustained during his arrest, and for mistreatment while in the holding cell, and for failure to give him requested medical attention.

19. Defendants subsequently filed a Motion for Summary Judgment on January 22, 2015, alleging as an affirmative defense that Mr. Crane failed to exhaust his administrative remedies. In particular, Defendants allege that because Mr. Crane did not file a

grievance within the time prescribed by the Jail's Inmate Handbook, his claims are barred by the Prison Litigation Reform Act of 1995 ("PLRA"), 42 U.S.C. § 1997e(a).

20. On January 26, 2016, the Court heard oral testimony by Mr. Crane and employees of the Jail regarding Mr. Crane's claims and general Jail policies and procedures. Magistrate Judge Lynch ordered the parties to submit proposed findings of fact and conclusions of law.

Conclusions of Law

21. The PLRA provides that "[n]o act 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, until such administrative remedies *as are available* are exhausted." 42 U.S.C. § 1997e(a) (emphasis added).

22. The Supreme Court has held that the failure to satisfy the exhaustion requirement is an affirmative defense. *See Pavey v. Conley*, 544 U.S. 739, 741 (2008) (citing *Jones v. Bock*, 549 U.S. 1999 (2007)). As such, the plaintiff does not need to plead exhaustion of administrative remedies in his complaint. *Id.*

23. In *Pavey*, the Seventh Circuit described the proper sequence for working through an exhaustion defense.

(1) The district judge conducts a hearing on exhaustion and permits whatever discovery relating to exhaustion he deems appropriate. (2) If the judge determines that the prisoner did not exhaust his administrative remedies, the judge will then determine whether (a) the plaintiff has failed to exhaust his administrative remedies . . . (b) or, although he has not exhausted administrative remedies, the failure to exhaust was innocent (as where prison officials prevent a prisoner from exhausting his remedies), and so he must be given another chance to 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. *Id.* at 742.

24. The burden is on Defendants to prove (1) that the administrative remedy was available, and (2) that the plaintiff failed to pursue it. *See Thomas v. Reese*, 787 F.3d 845, 847 (7th Cir. 2015) (citing *Jones v. Bock*, 549 U.S. 199 (2007)); *Pavey v. Conley*, 663 F.3d 899, 903 (7th Cir. 2011).

25. Where administrative remedies are not “available” to an inmate, the inmate cannot be required to exhaust them. *See Woodford v. Ngo*, 548 U.S. 81, 103 (2006) Thus, “correctional officials concerned about maintaining order in their institutions have a reason for creating and retaining grievance systems that provide—and that are perceived as providing—a meaningful opportunity for prisoners to raise meritorious grievances.” *Id.* at 103.

26. Specifically, “when prison officials prevent inmates from using the administrative process . . . the process that exists on paper becomes unavailable in reality.” *Kaba v. Stepp*, 458 F.3d 678, 684 (7th Cir. 2006). For example, “a remedy is ‘unavailable’ if prison employees do not respond to a properly filed grievance or otherwise use affirmative misconduct to prevent a prisoner from exhausting.” *Dole v. Chandler*, 438 F.3d at 804, 809 (7th Cir. 2006). *See also Thomas v. Reese*, 787 F.3d 845, 848 (7th Cir. 2015) (administrative remedies not available to prisoner when prisoner did not have time to absorb contents of handbook in one day prior to the incident alleged); *Smith v. Buss*, 364 Fed. App’x 253, 256 (7th Cir. 2010) (administrative remedies were not available where grievances were closed after materials had “apparently been lost, misplaced, or thrown away”); *Dale v. Lappin*, 376 F.3d 652, 656 (7th Cir. 2004) (when prison official fails to provide inmates with the forms necessary to file an administrative grievance, administrative remedies are not “available”); *Williams v. Leclerc*, 2016 WL 540978, at *3 (S.D. Ind. Feb. 11, 2016) (on motion for summary judgment, genuine issue of

material fact existed regarding whether inmate fully exhausted his administrative remedies and whether his grievance file was complete).

27. To the extent that there are genuine issues of material fact with respect to the availability of an administrative remedy, the Court must accept plaintiff's version of the facts. *See Smith*, 364 Fed. Appx. at 256 (citing *Lewis v. Downey*, 581 F.3d 467, 472 (7th Cir. 2009) ("the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor") (internal citations omitted)).

28. Defendants have failed to meet their burden to demonstrate that the administrative remedies articulated in the Inmate Manual were actually available to Mr. Crane. Mr. Crane testified that he submitted grievances and requests for medical attention relating to his arrest and subsequent denial of medical attention in the days after he was transferred to the general inmate housing unit at the Jail. Those records, along with grievances relating to Mr. Crane's former attorney, are missing from the Jail's file on Mr. Crane.

29. Moreover, the Jail's flawed system for collecting and maintaining records of inmate grievances evidences the Jail's inability to verify that an inmate's records are accurate and complete. Jail Commander Hall admitted that grievances could be lost or destroyed between the time that they are submitted to a guard and the time that they are delivered to his office for review. Because inmates are not provided with a carbon copy or some other facsimile of their grievance at the time it is submitted, they have no way of independently verifying the submission of any materials until they receive the signed copy back from the guards. Simply put, if the guards lost or destroyed Mr. Crane's grievances, Mr. Crane would have no way of proving they were ever submitted.

30. Finally, Mr. Crane testified that during his stay in the initial holding cell and immediately after he was transferred to the general housing population, he complained to several guards about his arrest and subsequent denial of medical attention, and was assured that someone at the Jail would look into the incidents. These oral requests are equivalent to the kind of informal grievances envisioned by the Jail's grievance policy statement. Because Mr. Crane was assured that the incidents were being investigated, he did not need to file a formal grievance in order to exhaust his administrative remedies.

31. For the foregoing reasons, the Court finds that Defendants have failed to carry their burden to demonstrate that Mr. Crane failed to exhaust his administrative remedies, Defendant's Motion for Summary Judgment is hereby DENIED, and the case will proceed with discovery on the merits.

SO ORDERED THIS _____ DAY OF _____, 2016.

JUDGE, U.S. District Court, Southern
District of Indiana

Dated: February 19, 2016

Respectfully submitted,

/s/ Anna M. Konradi
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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2016, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the parties of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Anna M. Konradi