IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2684
Summary Calendar

HELEN CONWELL

Petitioner-Appellant,

v.

BUREAU OF PRISONS, ET AL.

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 92 3297)

(November 22, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Petitioner Helen Conwell appeals from the district court's dismissal of her petition for writ of habeas corpus under 28 U.S.C. § 2241. Dismissal was granted on the grounds that Conwell had failed to exhaust the administrative remedies provided by the Bureau of Prisons. We affirm the judgment of the district court.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

I. FACTUAL AND PROCEDURAL BACKGROUND

On November 5, 1991, Conwell entered the custody of the Bureau of Prisons ("BOP") at the federal prison camp in Alderson, West Virginia. Conwell was serving a thirty-month sentence for a bank fraud conviction. In her § 2241 petition, filed on October 26, 1992, she complained of not being placed in a non-smoking unit, not being given speech therapy, and not being given throat lozenges. Moreover, she challenged the decisions of prison officials in Alderson, West Virginia and Bryan, Texas who denied her entry into "boot camp," work-release programs, and a night-shift bakery job because of concern over her health and physical condition. Conwell claimed that she was discriminated against based upon her "handicap" because her prior heart attack and continuing hypertension problems were cited by prison officials as reasons for denying her requests. In her § 2241 petition, Conwell prayed for "immediate release to my home, for the continuation of serving the rest of my sentence under the Home Confinement Ruling."

The magistrate judge made the following observations:

> Petitioner wrote numerous memos directed to her case management team. In addition, Petitioner wrote a letter to the acting warden and assistant warden at Bryan and to the Director of the Bureau of Prisons requesting assistance in gaining acceptance into either boot camp or the work release program. Petitioner did not file any grievances or seek any administrative review through the Bureau of Prisons.

Conwell alleged that her memos and letters should suffice to meet the exhaustion requirement, but the magistrate judge stated that "Petitioner['s] letters and memos requesting action are not proper

grievances or administrative appeals," and therefore, the magistrate judge recommended dismissal of the petition for failure to exhaust. On August 5, 1993, the district court adopted the recommendation of the magistrate judge and dismissed Conwell's petition without prejudice. Conwell was placed in home confinement on October 20, 1993, and on January 6, 1994, she was released from the custody of the BOP and began serving a three-year period of supervised release.

II. ANALYSIS AND DISCUSSION

The district court's decision to dismiss Conwell's habeas corpus petition for failure to exhaust administrative remedies is reviewed under an abuse of discretion standard. See Fuller v. Rich, 11 F.3d 61, 62 (5th Cir. 1994). Primary responsibility for the supervision of federal prisoners is delegated by statute to the BOP. See Lundy v. Osborn, 555 F.2d 534, 535 (5th Cir. 1977). As we noted in Lundy:

> Under that authority, the Bureau has promulgated rules and regulations for the proper administration of the various prisons and has established effective means to review actions taken by local prison officials. In line with these regulations, grievances of prisoners concerning prison administration should be presented to the Bureau through the available administrative channels. *Only after such remedies are exhausted will the court entertain the application for relief in an appropriate case*.

Id. (emphasis added).

Prior to asserting claims in federal district courts, federal prisoners must initially attempt to resolve their claims with the BOP through the available administrative channels. See, e.g.,

United States v. Cleto, 956 F.2d 83, 84 (5th Cir. 1992) ("[E]xhaustion of administrative remedies is a prerequisite to filing a section 2241 petition . . . ."); United States v. Gabor, 905 F.2d 76, 78 n.2 (5th Cir. 1990) ("Not only must a petitioner . . . file his petition pursuant to § 2241, but he must first exhaust his administrative remedies through the Bureau of Prisons."). As the Supreme Court has noted, "[e]xhaustion is required because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency." McCarthy v. Madigan, 112 S. Ct. 1081, 1086 (1992).

The Administrative Remedy Procedure established by the BOP initially requires inmates to informally present their complaints to prison staff members. See 28 C.F.R. § 542.13(a) (1993). Through her letters and memos, Conwell clearly satisfied this requirement. If the inmate is unable to informally resolve a complaint, however, a "formal written complaint" may be filed "on the appropriate form." Id. § 542.13(b). The filing of a formal complaint or appeal in this manner shall be acknowledged by prison officials by returning a receipt to the inmate, and a "complaint or appeal is considered filed when the receipt is issued." Id. §§ 542.11(a)(2), 542.14. If the inmate is not satisfied with the Warden's response to the formal complaint, an appeal may be filed "on the appropriate form" to the Regional Director, with further appeal "on the appropriate form" to the General Counsel if satisfactory relief is still not obtained. Id. § 542.15. Appeal

to the Office of General Counsel is the final administrative appeal in the BOP's Administrative Remedy Procedure. See id.

Upon our review of the record, we conclude that Conwell never filed a formal complaint on any "appropriate form," and correspondingly, a receipt never issued. Similarly, Conwell neither appealed to the Regional Director nor to the General Counsel. We construe her multiple letters and memos as informal complaints to various prison officials, satisfying only the "informal resolution" tier of the BOP's Administrative Remedy Procedure. The other procedural safeguards were simply not pursued.

We have held that "[e]xceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." Fuller, 11 F.3d at 62 (internal quotation omitted). Nevertheless, these exceptions apply only in "extraordinary circumstances," and Conwell bears the burden of demonstrating the futility of administrative review. Id. She contends that the district court told her that exhaustion was unnecessary, and she alleges an inability to procure the official forms. We find, however, that these contentions fail to rise to the level of "extraordinary circumstances," especially because these allegations are not adequately supported in the record. Because Conwell has failed to exhaust her administrative remedies -- as required before a claim for habeas corpus relief will be

entertained[1] -- we conclude that the district court did not abuse its discretion in dismissing Conwell's habeas petition without prejudice.[2]

III. CONCLUSION

For the foregoing reasons, the judgment of the district court dismissing Conwell's habeas petition for failure to exhaust administrative remedies is AFFIRMED.

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[1] In Rourke v. Thompson, we did note that "the Supreme Court determined that a federal prisoner need not exhaust those [administrative] remedies prior to filing a *Bivens* action `solely for money damages.'" 11 F.3d 47, 50 (5th Cir. 1993) (citing McCarthy, 112 S. Ct. at 1086-91). Although the allegations of pro se complainants should be liberally construed, see Haines v. Kerner, 404 U.S. 519, 520-21 (1972), Conwell did not seek monetary damages. Thus, the district court did not err in declining to construe Conwell's discrimination allegation as a Bivens-type complaint.

[2] We construe Conwell's allegations throughout the lower court proceedings as complaints about the execution of her sentence, which is properly contested under § 2241. See, e.g., Cleto, 956 F.2d at 84 ("The government correctly points out that petitioner's claim should have been filed as a petition for writ of habeas corpus under 28 U.S.C. § 2241, as he challenges the execution of his sentence rather than the validity of his conviction and sentence."); Gabor, 905 F.2d at 77-78 (noting that for an attack on the execution of a sentence, "[s]uch claims are not cognizable in § 2255 proceedings but rather must be addressed as habeas corpus petitions under 28 U.S.C. § 2241"). Because Conwell is still serving part of her sentence on supervised release, we conclude that her claims are not moot. Similarly, we deny respondents-appellees' motion for reconsideration of the motion to dismiss.