

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 94-30285  
Summary Calendar

---

RAYMOND HARRIS,

Plaintiff-Appellant,

VERSUS

MYRTLE NICHOLAS, Sergeant, ET AL.,

Defendants-Appellees.

---

Appeal from the United States District Court  
for the Middle District of Louisiana  
(93-CV-773-B-M2)

---

June 29, 1995

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:<sup>1</sup>

Raymond Harris, an inmate at the Louisiana State Penitentiary at Angola, appeals the district court's dismissal of his § 1983 action for failure to exhaust administrative remedies. We **AFFIRM**.

I.

In September 1993, Harris filed this action against four prison officials, asserting various claims based on a September 1992 disciplinary report, and seeking monetary and injunctive relief. Because Harris alleged that he had sought administrative

---

<sup>1</sup> 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

review by sending two letters to the warden in September and November of 1992, the magistrate judge stayed the case for 30 days in order for the Louisiana Department of Corrections to provide a copy of the record of the administrative proceedings, or to certify that Harris had failed to exhaust his administrative remedies. In the event that Harris had not exhausted those remedies, the magistrate judge ordered, pursuant to 42 U.S.C. § 1997e(a)(1), that the action be stayed for up to 90 days in order for Harris to do so.

By affidavit, the general administrator of the Department of Public Safety and Corrections, Administrative Remedy Procedure, certified that Harris had not exhausted his administrative remedies. As a result of this affidavit, the magistrate judge ordered Harris to show cause why his case should not be dismissed for failure to exhaust administrative remedies. In response, Harris stated that he wrote the warden, rather than proceeding by the administrative procedures, because he wanted a fast result.<sup>2</sup>

Finding that Harris had failed to demonstrate a good faith effort to exhaust his administrative remedies because he failed to comply with the requirements of the emergency review requirements, the magistrate judge recommended that Harris' suit be dismissed for

---

<sup>2</sup> Prior to the show cause order, Harris initiated another request to the warden regarding the September 1992 incident. This request was rejected as being untimely. Following the issuance of the show cause order, a copy of the request was filed with the district court, and Harris indicated that the copy was filed pursuant to the magistrate judge's original stay wherein the judge ordered that, because Harris had not exhausted his administrative remedies, that the case be stayed for up to 90 days in order that he might exhaust his administrative remedies.

failure to exhaust his administrative remedies.<sup>3</sup> After independently reviewing the record, the district court dismissed Harris' action with prejudice for failure to exhaust administrative remedies pursuant to 42 U.S.C. §1997e(a)(1).

## II.

Section 7 of the Civil Rights of Institutionalized Persons Act of 1980 provides, in part:

[I]n any action brought pursuant to section 1983 of this title by an adult convicted of a crime confined in any jail, prison, or other correctional facility, the court shall, if the court believes that such a requirement would be appropriate and in the interests of justice, continue such case for a period of not to exceed 180 days in order to require exhaustion of such plain, speedy, and effective administrative remedies as are available.

42 U.S.C. § 1997e(a)(1). Thus, district courts are given broad discretion to require an inmate to exhaust prison administrative remedies prior to bringing a § 1983 action.

Harris acknowledges that, prior to filing his action, he failed to exhaust available administrative remedies. He claims that, because he instituted a grievance within 90 days of the magistrate judge's stay order, see notes 2 and 3, *supra*, he

---

<sup>3</sup> Originally, on September 21, 1993, the magistrate judge issued the 30/90 day stay order. On October 22, within the 30 day period, the court received the general administrator's affidavit wherein the administrator certified that Harris had not exhausted his administrative remedies. Pursuant to the September 21 order, the stay should have continued for another 60 days in order for Harris to exhaust his administrative remedies. On October 28, however, the magistrate issued her show cause order. Although this action would appear to be inconsistent with the language of the 30/90 day stay order, the general administrator's affidavit indicates that a new grievance would be time-barred. Thus, the show cause order, which would appear to be premature, was appropriate and expedited the process.

demonstrated a good faith effort at exhausting his administrative remedies.

Although Harris' untimely grievance may have complied with the magistrate's stay order, see note 3, *supra*, the district court was still within its discretion in dismissing the action. In ***Marsh v. Jones***, No. 94-30458, slip op. 3941 (5th Cir. June 2, 1995), a prisoner had filed a grievance which was rejected as being untimely. When she sought subsequently to initiate a § 1983 action, the district court ordered her to show cause why the suit should not be dismissed under § 1997e. As in this case, the prisoner's administrative remedies were time-barred. Thus, the 90-day stay served no purpose and Harris' tardiness was not justified. In ***Marsh***, our court recognized that, even in such a situation,

a district court still has the power to dismiss a prisoner's suit under section 1997e for failure to exhaust administrative remedies.... Without the prospect of a dismissal with prejudice, a prisoner could evade the exhaustion requirement by filing no administrative grievance or by intentionally filing an untimely one, thereby foreclosing administrative remedies and gaining access to a federal forum without exhausting administrative remedies.... Thus, we hold that a district court has the power to dismiss a prisoner's section 1983 suit under section 1997e even when administrative relief is time-barred or otherwise precluded.

***Id.*** at 3945 (internal cite omitted); see *Arvie v. Stalder*, No. 94-30151, slip op. 3936 (5th Cir. June 2, 1995) (a state prisoner seeking both injunctive and monetary relief must exhaust prison administrative procedures before filing a § 1983 action in federal court).

III.

For the foregoing reasons, the judgment of dismissal is

**AFFIRMED.**