

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
ALABAMA, NORTHERN DIVISION

Kevin Lee Harvey v. Officer Melanie Patterson

Harvey · No. 2:24-CV-636-WKW · Decided April 21, 2026

SUMMARY

The United States District Court for the Middle District of Alabama dismissed Kevin Lee Harvey’s 42 U.S.C. § 1983 action against Officer Melanie Patterson without prejudice for failure to exhaust available administrative remedies under the Prison Litigation Reform Act. The court construed the exhaustion portion of Patterson’s summary-judgment motion as an unenumerated Rule 12(b) motion, granted it, and denied the remaining summary-judgment motion as moot. Alternatively, the court dismissed the action without prejudice for failure to prosecute and comply with court orders.

CASE DETAILS

COURT	United States District Court for the Middle District of Alabama, Northern Division
WRITING FOR THE COURT	W. Keith Watkins
JURISDICTION	United States District Court for the Middle District of Alabama, Northern Division
DECIDED	April 21, 2026
DOCKET	2:24-CV-636-WKW
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff brought a 42 U.S.C. § 1983 action alleging that Defendant violated protocols by opening a cell occupied by federal inmates, resulting in Plaintiff being stabbed, and alleging related wrongful criminal charges. Defendant moved for summary judgment, arguing, among other things, that Plaintiff failed to exhaust administrative remedies. The court construed the exhaustion portion of the motion as an unenumerated Rule 12(b) motion to dismiss and dismissed the action without prejudice.
STANDARD OF REVIEW	For an unenumerated Rule 12(b) motion based on failure to exhaust administrative remedies, the court may consider facts outside the pleadings and resolve factual disputes so long as those disputes do not decide the merits and the parties had a sufficient opportunity to develop the record. Under <i>Turner v. Burnside</i> , the court first accepts

	the prisoner's version of disputed facts as true and, if dismissal is not warranted, proceeds to make specific factual findings concerning exhaustion. The defendant bears the burden of showing that available administrative remedies were not exhausted.
PRECEDENTIAL VALUE	Unpublished and nonprecedential memorandum opinion; marked [WO].
PARTIES	Kevin Lee Harvey v. Officer Melanie Patterson

TOPICS

motions to dismiss

prisoners rights

section 1983

summary judgment

discovery dispute

PRACTICE AREAS

Civil rights

Prisoner litigation

Civil procedure

QUESTIONS PRESENTED

1. Whether Plaintiff's failure to exhaust available administrative remedies required dismissal of his § 1983 action under the Prison Litigation Reform Act.
2. Whether the exhaustion defense raised in Defendant's summary-judgment motion should be treated as an unenumerated Rule 12(b) motion to dismiss.
3. Whether the action should alternatively be dismissed without prejudice for failure to prosecute and failure to comply with court orders.
4. Whether Defendant's motion for summary judgment should be decided after dismissal for failure to exhaust.

HOLDINGS

1. The PLRA requires a prisoner bringing a § 1983 action concerning prison conditions to properly exhaust available administrative remedies before filing suit. Because the unrebutted record showed that an available grievance procedure existed and Plaintiff did not use it before filing this action, dismissal without prejudice was required.
2. In the Eleventh Circuit, an exhaustion defense raised in a motion for summary judgment is treated as an unenumerated Rule 12(b) motion to dismiss because exhaustion is a matter in abatement rather than an adjudication on the merits.
3. Applying the Turner two-step process, the court dismissed because the undisputed record demonstrated that Plaintiff failed to exhaust available administrative remedies before filing suit.
4. Alternatively, the action could be dismissed without prejudice because Plaintiff failed to respond to Defendant's discovery request after an order compelling a response and failed to respond to Defendant's summary-judgment motion despite a specific court order.

KEY QUOTATIONS

“No action shall be brought with respect to prison conditions under [42 U.S.C. §] 1983 . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” (Part IV.A.1)

“Because exhaustion of administrative remedies is a matter in abatement and not generally an adjudication on the merits, an exhaustion defense is not ordinarily the proper subject for a summary judgment; instead, it should be raised in a motion to dismiss, or be treated as such if raised in a motion for summary judgment.” (Part IV.A.2)

“The unrefuted record thus demonstrates that Plaintiff did not properly exhaust available administrative remedies before seeking relief in federal court.” (Part IV.A.3)

FACTUAL BACKGROUND

Harvey, an inmate detained at the Montgomery County Detention Facility, alleged that on August 22, 2024, Officer Patterson opened a cell occupied by federal inmates while Harvey and his cellmates were out for their daily hour. He alleged that the federal inmates used knives to stab him and that he was transported to Jackson Hospital for treatment. He also alleged that he was wrongfully charged with promoting prison contraband. The record showed that the facility had an available grievance procedure, that Harvey acknowledged receiving the inmate handbook containing that procedure, and that he filed no grievance concerning the incident before filing suit.

PROCEDURAL HISTORY

Harvey filed the action in October 2024 against the Montgomery County Detention Facility, the Montgomery County Sheriff's Office, and Officer Melanie Patterson. The detention facility and Sheriff's Office were dismissed on May 15, 2025. Defendant later moved to compel discovery, which the court granted, but Plaintiff did not respond. Defendant moved for summary judgment, and Plaintiff did not respond despite an order directing him to do so. The court granted the construed exhaustion-based motion to dismiss, denied summary judgment as moot, and alternatively dismissed without prejudice for failure to prosecute and comply with court orders.

DISPOSITION

dismissed

CASES CITED

- Porter v. Nussle, 534 U.S. 516, 532 (2002)
- Woodford v. Ngo, 548 U.S. 81, 88, 93 (2006)
- Perttu v. Richards, 605 U.S. 460, 465, 469, 479 (2025)
- Pavao v. Sims, 679 F. App'x 819, 823 (11th Cir. 2017) (per curiam)
- Jones v. Brock, 549 U.S. 199, 211 (2007)
- Maldonado v. Unnamed Defendant, 648 F. App'x 939, 951 (11th Cir. 2016) (per curiam)

- Bryant v. Rich, 530 F.3d 1368, 1374-1375 (11th Cir. 2008)
- Turner v. Burnside, 541 F.3d 1077, 1082-1083 (11th Cir. 2008)
- Whatley v. Warden, Ware State Prison, 802 F.3d 1205, 1209 (11th Cir. 2015)
- McGuire-Mollica, 146 F.4th 1308, 1314 (11th Cir. 2025)
- McNair v. Johnson, 143 F.4th 1301, 1306-1307 (11th Cir. 2025)
- Link v. Wabash R.R. Co., 370 U.S. 626, 629-630 (1962)
- Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989)
- Mingo v. Sugar Cane Growers Co-Op of Fla., 864 F.2d 101, 102 (11th Cir. 1989) (per curiam)
- Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985)

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