

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
OKLAHOMA

Jerome Adrian David v. Scott Crow, et al.

David v. Crow · No. CIV-21-534-SLP · Decided March 23, 2026

SUMMARY

The United States District Court for the Western District of Oklahoma granted Defendant Elsie Persall’s motion to dismiss, in part construed as a motion for summary judgment, concerning Plaintiff Jerome Adrian David’s Eighth Amendment heart-healthy diet claim. The court dismissed the official-capacity claim without prejudice under Eleventh Amendment immunity and dismissed the claim for failure to exhaust administrative remedies under 42 U.S.C. § 1997e(a). The court also denied David’s motion for leave to supplement and directed entry of an amended judgment.

CASE DETAILS

COURT	United States District Court for the Western District of Oklahoma
WRITING FOR THE COURT	Scott L. Palk
JURISDICTION	United States District Court for the Western District of Oklahoma
DECIDED	March 23, 2026
DOCKET	CIV-21-534-SLP
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant Persall moved to dismiss the plaintiff’s remaining § 1983 heart-healthy diet claim. The court treated the motion as a Rule 12(b) (1) motion as to official-capacity Eleventh Amendment immunity and converted it in part to a Rule 56 motion as to exhaustion and the individual-capacity claim.
STANDARD OF REVIEW	For a facial Rule 12(b)(1) challenge, well-pleaded factual allegations are accepted as true, and the party invoking federal jurisdiction bears the burden of establishing jurisdiction. For summary judgment on an affirmative defense, the defendant must show that no disputed material fact exists; the plaintiff must then identify a specific disputed material fact. Uncontroverted matters outside the pleadings may support dismissal for failure to state a claim or lack of exhaustion.
PRECEDENTIAL VALUE	Unknown; federal district court order with no reporter citation.

PARTIES

Jerome Adrian David v. Elsie Persall

TOPICS

motions to dismiss

summary judgment

prisoners rights

section 1983

eleventh amendment immunity

PRACTICE AREAS

prisoner civil rights

federal civil procedure

constitutional law

QUESTIONS PRESENTED

1. Whether Eleventh Amendment immunity barred David's § 1983 Eighth Amendment claim against Persall in her official capacity.
2. Whether David exhausted administrative remedies under 42 U.S.C. § 1997e(a) for his heart-healthy diet claim against Persall.
3. Whether David should be granted leave to supplement his findings of fact and conclusions of law concerning Eleventh Amendment immunity.

HOLDINGS

1. A § 1983 claim against Persall in her official capacity was barred by Eleventh Amendment immunity because it was effectively a claim against the State of Oklahoma, Congress did not abrogate the state's immunity through § 1983, and Oklahoma had not waived immunity in the circumstances presented.
2. David failed to exhaust administrative remedies for his heart-healthy diet claim because Grievance No. 21-1 did not provide prison officials sufficient information to investigate the actual claim alleged in the complaint.
3. Leave to supplement the findings of fact and conclusions of law was denied because the proposed supplement presented no basis for a different Eleventh Amendment immunity ruling and was sought at a very late stage.

KEY QUOTATIONS

“In order for a grievance to be properly exhausted, an inmate must complete all phases of the ODOC’s grievance process.”

“The Court finds, therefore, that dismissal of Plaintiff’s heart-healthy diet claim against Defendant Persall is proper for failure to exhaust administrative remedies.”

FACTUAL BACKGROUND

David was incarcerated at the William S. Key Correctional Center from November 18, 2020, to July 21, 2021. He alleged that kitchen supervisor Elsie Persall failed to provide a heart-healthy diet allegedly prescribed by a practitioner, served processed foods, and refused to allow him to view the healthy-heart menu, causing or contributing to various health symptoms. His only relevant grievance, Grievance No. 21-1, concerned spoiled

peaches and the general nature of food served, but did not mention hypertension, a practitioner-ordered diet, or Persall's alleged interference with prescribed treatment.

PROCEDURAL HISTORY

The plaintiff previously obtained a judgment addressing other claims and appealed to the Tenth Circuit. During the appeal, the Tenth Circuit determined that the heart-healthy diet claim had not been adjudicated and abated the appeal pending resolution of that claim. The district court granted Persall's motion as to the official-capacity claim on Eleventh Amendment grounds and dismissed the claim without prejudice for failure to exhaust administrative remedies. The court denied the plaintiff's motion for leave to supplement and stated that it would enter an amended judgment.

DISPOSITION

dismissed

CASES CITED

- Ruiz v. McDonnell, 299 F.3d 1173, 1180 (10th Cir. 2002)
- Harris v. Owens, 264 F.3d 1282, 1288 (10th Cir. 2001)
- Muscogee (Creek) Nation v. Pruitt, 669 F.3d 1159, 1167-68 (10th Cir. 2012)
- Davis v. California, 2017 WL 4758928, at *1 (D. Kan. Oct. 20, 2017)
- Moreno v. Kan. City Steak Co., 2017 WL 2985748, at *3 (D. Kan. July 13, 2017)
- Salzer v. SSM Health Care of Okla. Inc., 762 F.3d 1130, 1134 (10th Cir. 2014)
- Kinney v. Blue Dot Servs. of Kan., 505 F. App'x 812, 814 (10th Cir. 2012)
- Basso v. Utah Power & Light Co., 495 F.2d 906, 909 (10th Cir. 1974)
- Estrada v. Smart, 107 F.4th 1254, 1261 (10th Cir. 2024)
- Williams v. Trammell, 678 F. App'x 668, 669 n.1 (10th Cir. 2017)
- Welch v. Tex. Dep't of Highways & Pub. Transp., 483 U.S. 468, 472-74 (1987)
- Quern v. Jordan, 440 U.S. 332, 345 (1979)
- Ramirez v. Okla. Dep't of Mental Health, 41 F.3d 584, 589 (10th Cir. 1994)
- Muscogee (Creek) Nation v. Okla. Tax Comm'n, 611 F.3d 1222, 1227 (10th Cir. 2010)
- Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989)
- Steadfast Ins. Co. v. Agric. Ins. Co., 507 F.3d 1250, 1252 (10th Cir. 2007)
- Jones v. Bock, 549 U.S. 199 (2007)
- Little v. Jones, 607 F.3d 1245, 1249 (10th Cir. 2010)
- Thomas v. Parker, 609 F.3d 1114, 1117-18 (10th Cir. 2010)
- Barnes v. Allred, 482 F. App'x 308, 312 (10th Cir. 2012)
- Woodford v. Ngo, 548 U.S. 81, 95 (2006)
- Colby v. Herrick, 849 F.3d 1273, 1278 (10th Cir. 2017)

- *Gallagher v. Shelton*, 587 F.3d 1063, 1068 (10th Cir. 2009)
- *David v. Crow*, Case No. 24-6167 (10th Cir.), Order [Doc. No. 56] (Apr. 25, 2025)

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