

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Dalevon Anthony Colbert v. Wasco State Prison, et al.

Colbert v. Wasco State Prison · No. 1:25-cv-01740-SKO · Decided January 9, 2026

OPINION

Dalevon Anthony Colbert v. Wasco State Prison, et al.

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 DALEVON ANTHONY COLBERT, Case No.: 1:25-cv-01740-SKO 12 Plaintiff, ORDER
TO SHOW CAUSE IN WRITING

WITHIN 30 DAYS WHY ACTION SHOULD

13 v. NOT BE DISMISSED FOR A FAILURE TO

EXHAUST ADMINISTRATIVE REMEDIES

14 WASCO STATE PRISON, et al., 15 Defendants. 16 17 Plaintiff Dalevon Anthony Colbert is
appearing pro se and in forma pauperis in this civil 18 rights action pursuant to 42 U.S.C. section
1983.

19 I. INTRODUCTION & DISCUSSION

20 Plaintiff filed his complaint on December 4, 2025. (Doc. 1.) The Court has reviewed 21
Plaintiff’s complaint. In Claim I, Plaintiff indicates that there were available administrative 22
remedies at Wasco State Prison where he was previously incarcerated and where his claims arose.
23 (See Doc. 1 at 3.) Plaintiff, however, fails to state whether he submitted “a request for 24
administrative relief on Claim I” and whether he appealed any such request to the highest level. 25
(Id.) Plaintiff also left blank the section asking for a brief explanation in the event no request or 26
appeal was submitted. (Id.) In Claim II, Plaintiff failed to respond to the administrative remedy 27
inquiries in their entirety, and all three boxes and the explanation portion are blank. (Id. at 4.) The
Prison Litigation Reform Act (PLRA) provides that “[n]o action shall be brought with 1 respect to
prison conditions under . . . any other Federal law . . . by a prisoner confined in any jail, 2 prison,
or other correctional facility until such administrative remedies as are available are 3 exhausted.”
42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is mandatory and 4 “unexhausted
claims cannot be brought in court.” Jones v. Bock, 549 U.S. 199, 211 (2007) 5 (citation omitted).
The exhaustion requirement applies to all inmate suits relating to prison life, 6 Porter v. Nussle,
534 U.S. 516, 532 (2002), regardless of the relief sought by the prisoner or 7 offered by the
administrative process, Booth v. Churner, 532 U.S. 731, 741 (2001). 8 Inmates are required to

“complete the administrative review process in accordance with 9 the applicable procedural rules, including deadlines, as a precondition to bringing suit in federal 10 court.” *Woodford v. Ngo*, 548 U.S. 81, 88, 93 (2006). In California, state inmate grievances are 11 subject to two levels of review. See Cal. Code Regs. tit. 15, §§ 3481(a), 3999.226(a)(1). 12 Prisoners must generally receive a disposition from the second level of review before 13 administrative remedies are deemed exhausted. See *id.* §§ 3483, 3486, 3999.226(g); but see *id.* § 14 3483(l)(3). 15 In general, failure to exhaust is an affirmative defense that the defendant must plead and 16 prove. *Jones*, 549 U.S. at 204, 216. However, courts may dismiss a claim if failure to exhaust is 17 clear on the face of the complaint. See *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014). 18 Here, it appears Plaintiff may not have exhausted his administrative remedies prior to filing his 19 complaint. Specifically, as set forth above, Plaintiff’s responses as to Claim I are incomplete and 20 the required responses for Claim II are missing altogether. 21 Accordingly, the Court will direct Plaintiff to submit a written filing in which he answers 22 the questions relevant to administrative exhaustion. As to both claims asserted, Plaintiff must 23 state whether he (1) submitted a request for administrative relief (a grievance) and (2) appealed 24 that request to the highest level (an appeal). If, as to either Claim I or Claim II, Plaintiff did not 25 submit or appeal a request for relief at any level, he must briefly explain why he did not do so.

26 II. CONCLUSION AND ORDER

27 Accordingly, the Court HEREBY ORDERS that: 1 writing why this action should not be dismissed for a failure to exhaust administrative 2 remedies; 3 2. Plaintiff SHALL respond to the following questions regarding both Claim I and Claim 4 II: 5 a. Did you submit a request for administrative relief? 6 b. Did you appeal that request to the highest level? 7 c. If you did not submit a request for administrative relief and/or did not appeal 8 that request to the highest level, briefly explain why you did not do so; and 9 3. In the alternative, Plaintiff may file a notice of voluntary dismissal of this action 10 without prejudice. 11 IT IS SO ORDERED. 12 13 Dated: January 9, 2026 /s/ Sheila K. Oberto .

UNITED STATES MAGISTRATE JUDGE

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