

United States Court of Appeals
For the Eighth Circuit

No. 11-3810

Guy Clayton Barnes

Plaintiff - Appellant

v.

Arkansas Department of Correction; Danny Burl, originally sued as Burls; John
Belken, originally sued as Belkens; James Bell, originally sued as J.W. Bell;
Theaster Petty, originally sued as Pettie

Defendants - Appellees

Appeal from United States District Court
for the Eastern District of Arkansas - Helena

Submitted: July 24, 2012
Filed: August 16, 2012
[Unpublished]

Before LOKEN, BOWMAN, and COLLOTON, Circuit Judges.

PER CURIAM.

Inmate Guy Clayton Barnes appeals from the order of the District Court¹ dismissing his 42 U.S.C. § 1983 action for failure to exhaust administrative remedies. Upon de novo review, we conclude that dismissal without prejudice was warranted. See Hammett v. Cofield, 681 F.3d 945, 946 (8th Cir. 2012) (per curiam) (standard of review). It is clear from the record that Barnes’s grievance appeal was not decided on the merits but was denied because it was untimely. Cf. id. at 947 (adopting the position “that the PLRA’s exhaustion requirement is satisfied if prison officials decide a procedurally flawed grievance on the merits”). And while inmates cannot be held to exhaustion requirements when prison officials keep them from pursuing their administrative remedies, see Miller v. Norris, 247 F.3d 736, 740 (8th Cir. 2001), Barnes fell short of showing that such remedies were made unavailable to him. We affirm the District Court, and we deny Barnes’s pending motions for default judgment.

¹The Honorable J. Leon Holmes, United States District Judge for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable Jerome T. Kearney, United States Magistrate Judge for the Eastern District of Arkansas.