JONES v. BOCK: NEW CLARITY UNDER THE PRISON LITIGATION REFORM ACT

SQUIRE SERVANCE*

I. INTRODUCTION

On January 22, 2007, the Supreme Court decided the consolidated cases of *Jones v. Bock*,[1] *Williams v. Overton*,[2] and *Walton v. Bouchard,*[3] all of which were Sixth Circuit cases. In a unanimous decision,[4] the Supreme Court clarified what constitutes exhaustion of prison grievance procedures under the Prison Litigation Reform Act of 1995 (PLRA).[5] The Court also offered its view on the correct way to balance the burden between prisoner plaintiffs and the judiciary, which labors to process prisoner complaints.[6] Broken into three discreet issues, the essential holding provides a small victory for prison litigants. First, it established that a prisoner litigating under the PLRA does not have the burden to plead and demonstrate exhaustion in the complaint. Rather, the defendant must raise lack of exhaustion as an affirmative defense.[7] Second, it addressed whether a prisoner's initial administrative grievance must identify and name all the individuals charged in its complaint.[8] This determination lowered the bar outlined by the Sixth Circuit. Finally, it reviewed whether the PLRA requires dismissal of an entire complaint when some, but not

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1. Jones v. Bock, 135 F. App'x. 837 (6th Cir 2005).
2. Williams v. Overton, 136 F. App'x. 846 (6th Cir 2005).
3. Walton v. Bouchard, 136 F. App'x. 859 (6th Cir 2005).
4. Jones v. Bock, 127 S. Ct. 910 (2007).
5. 110 Stat. 1321-71, as amended, 42 U.S.C. § 1997e *et seq*.
6. Tim Birnbaum and Peter Milligan, *Supreme Court Oral Argument Previews: Jones v. Michigan Dept. of Corrections (05-7058)*, LEGAL INFORMATION INSTITUTE: SUPREME COURT ORAL ARGUMENT PREVIEWS, http://www.law.cornell.edu/supct/cert/05-7058.html (last visited Feb. 8, 2007).
7. *Jones*, 127 S. Ct. at 918.
8. *Id.* at 922–23.

all of the claims asserted have been exhausted. Once again, this issue was decided in favor of prisoners' rights.[9]

II. RELEVANT LAW: THE PRISON LITIGATION REFORM ACT OF 1995

Under 42 U.S.C. § 1983, a prisoner has the right to file a civil rights claim in federal court if the prisoner believes that his or her civil rights have been violated. There are thousands of these cases filed every year.[10] "Congress enacted the PLRA in 1996 with the intent that it would 'reduce the quantity and improve the quality of prisoner suits.'"[11] The PLRA, in an effort to judicially screen prisoner complaints, requires prisoners to exhaust prison grievance procedures before filing suit in federal court.[12] Thus, under the PLRA, prisoners must adhere to strict jurisdictional requirements in order to effectively file a suit.[13]

III. FACTS

The petitioners were all inmates in the custody of the Michigan Department of Corrections (MDOC).[14] The instructions for filing a grievance in the MDOC were as follows:

> Inmates must first attempt to resolve a problem orally within two business days of becoming aware of the grievable issue. If oral resolution is unsuccessful, the inmate may proceed to Step I of the grievance process, and submit a completed grievance form within five business days of the attempted oral resolution. The Step I grievance form provided by MDOC (a one-page form on which the inmate fills out identifying information and is given space to describe the complaint) advises inmates to be 'brief and concise in describing your grievance issue.' The inmate submits the grievance to a designated

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9. *Id.* at 924.
10. Birnbaum and Milligan, *supra* note 6.
11. *Id.* (quoting Porter v. Nussle, 534 U.S. 516, 524 (2002)). One commentator wrote:

> The PLRA has resulted directly in effective yet controversial results. First, the intended goals of the PLRA to reduce the quantity of prisoner litigation have been realized: the federal court system has experienced a dramatic decrease in prisoner cases (from 42,000 inmate civil rights petitions in 1995 to 26,000 petitions in 2000).

Emily Howald, *Jones, Lorenzo v. Bock (warden), et al. / Williams, Timothy v. Overton, William, et al.*, MEDILL JOURNALISM: ON THE DOCKET, Mar. 6, 2006, http://docket.medill.northwestern.edu/archives/003440.php.

12. *Jones*, 127 S. Ct. at 914.
13. Birnbaum, *supra* note 6.
14. *Jones*, 127 S. Ct. at 916.

> grievance coordinator, who assigns it to a respondent-generally the supervisor of the person being grieved.[15]

If the inmate is dissatisfied with the Step I response, he may appeal to Step II by obtaining an appeal form within five business days of the response, and submitting the appeal within five business days of obtaining the form. The respondent at Step II is designated by the policy, (*e.g.,* the regional health administrator for medical care grievances). If still dissatisfied after Step II, the inmate may further appeal to Step III using the same appeal form; the MDOC director is designated as respondent for all Step III appeals.[16]

In November 2000, Lorenzo Jones, an inmate, sustained injuries to his neck and back during a vehicle accident. [17] Several months later Jones was given a work assignment that he claimed he could not perform due to his injuries.[18] Jones informed the staff member that he could not work, but was allegedly told to do the work or "suffer the consequences."[19] Subsequently, Jones performed the task and allegedly aggravated his injuries.[20] After unsuccessfully seeking redress via the MDOC's grievance process, Jones filed a complaint in the Eastern District of Michigan against six individuals: the staff worker that forced him to work, the staff worker in charge of work assignments, the warden, a deputy warden, a registered nurse, and a physician. [21]

A magistrate recommended the dismissal of all claims for the failure to state a claim with respect to all individuals *except* the staff worker who forced Jones to work and the staff worker in charge of work assignments.[22] The District Court, however, held that there should be a dismissal of claims against all of the parties.[23] Jones's complaint provided the dates on which his claims were filed at various steps of the MDOC grievance procedures; however, he did not attach copies of the grievance forms or adequately describe the

15. *Id.* (internal citations omitted).
16. *Id.*
17. *Id*.
18. *Id.* at 916–17.
19. *Id.* at 917.
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*

proceedings.[24] Even though the respondents attached copies of all of Jones's grievances to their own motion to dismiss, the District Court ruled that Jones's failure to plead exhaustion in his complaint could not be cured.[25] The Sixth Circuit affirmed the District Court's decision because "Jones failed to comply with the specific pleading requirements applied to PLRA suits" and because "even if Jones had shown that he exhausted the claims against Morrison [the staff member worker in charge of work assignments] and Opanasenko [the staff worker that forced Jones to work], dismissal was still required under the total exhaustion[26] rule."[27]

In *Williams v. Overton*, prisoner Timothy Williams suffered from noninvoluting cavernous hemangiomas in his right arm, a condition that causes pain, immobility, and disfigurement of the limb.[28] Williams filed a complaint claiming that the Department of Corrections prevented him from obtaining proper medical care for his medical condition.[29] The Eastern District of Michigan Court held that Williams failed to exhaust his administrative remedies because he did not identify all of the respondents in his lawsuit during the grievance process.[30] As a result, the District Court applied the total exhaustion rule and dismissed the entire suit, despite the plaintiff's claim that he *had* properly exhausted the grievance procedures.[31] The Sixth Circuit affirmed.[32]

In *Walton v. Bouchard*, prisoner John Walton assaulted a guard and was sanctioned with an indefinite "upper slot" restriction.[33] Walton later found out that other prisoners with the same infraction were given only a three-month "upper slot" restriction.[34] He filed a complaint claiming that this disparity was racially motivated.[35] The Western District of Michigan Court dismissed this lawsuit because

24. *Id.*
25. *Id.*
26. Total exhaustion means that a complaint containing both exhausted and unexhausted claims cannot be adjudicated. *See id.* at 924–25.
27. *Id.* at 917.
28. *Id.*
29. *Id.*
30. *Id.* at 917–18.
31. *Id.* at 918.
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*

Walton did not name all of the individuals he was currently filing a complaint against in his initial administrative grievance.[36] "His claims against the other respondents were thus not properly exhausted, and the court dismissed the entire action under the total exhaustion rule."[37] The Sixth Circuit affirmed.[38] It reiterated its requirement that a prisoner must file a grievance at Step I of the MDOC grievance process against the person he ultimately seeks to sue.[39]

IV. DISCUSSION AND ANALYSIS

Chief Justice Roberts wrote the opinion for a unanimous Court. The Court's holding was three-fold: (1) under the PLRA, failure to exhaust is an affirmative defense and inmates are not required to plead or demonstrate exhaustion in their complaints;[40] (2) under the PLRA, compliance with prison grievance procedures is all that is required to "properly exhaust" a claim and failure to name an individual that is later sued, is not *per se* inadequate;[41] (3) the PLRA does not require the dismissal of the entire complaint when some, but not all, of the claims in the complaint have been exhausted.[42] The Court reversed and remanded all of the Sixth Circuit rulings.

A. Failure to exhaust is an affirmative defense.

The Court noted that, under the PLRA, exhaustion was mandatory for a claim to be brought into court, but that the PLRA was silent on the issue of whether exhaustion must be pleaded by the plaintiff or is an affirmative defense.[43] The usual practice under the Federal Rules is to regard exhaustion as an affirmative defense.[44] Chief Justice Roberts wrote that "[c]ourts should generally not depart from the usual practice under the Federal Rules on the basis of perceived policy concerns."[45] Therefore, the silence of the PLRA is

36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.* at 922–23.
42. *Id.* at 924.
43. *Id.* at 918–19.
44. *Id.* at 919
45. *Id.*

strong evidence that the usual practice should be followed.[46] The Sixth Circuit view that prisoners are required to plead and demonstrate exhaustion in their complaints was a minority view and is considered by the Court outside the typical litigation framework.[47] There was no justifiable reason for the Sixth Circuit to deviate from the usual procedural practice beyond the departures specified by the PLRA itself.[48] The Court held that failure to exhaust is an affirmative defense and inmates are not required to specially plead or demonstrate exhaustion in their complaints.[49]

There are two important policy reasons that support the Court's decision that Chief Justice Roberts did not address. First, many prisoners who file complaints are filing *pro se*, thereby the courts treat their pleadings in a more liberal fashion by ignoring imperfections.[50] Furthermore, "[c]ourts recognize that prisoners are frequently uneducated, unsophisticated, and legally inexperienced."[51] Forcing prisoners to succumb to a heightened and highly technical pleading requirement by requiring them to show exhaustion would be considered an intolerant pleading standard.[52] Such a requirement would cause prisoners who make even minor mistakes in the administrative grievance process and in their pleadings to have their complaints dismissed.[53] From a public policy perspective, applying this heightened pleading requirement to prisoner complaints appears improper.

Secondly, it is more proper to have the prison officials bear the burden of pleading administrative exhaustion because they have better access to the resources that such pleading requires.[54] "Prison officials have lawyers and [have] greater access to the prison records than prisoners . . . . With their access to prison records, they are better equipped to provide the court with documentation and explanations

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46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.* at 918.
50. Jamie Ayers, Commentary, *To Plead or Not to Plead: Does the Prison Litigation Reform Act's Exhaustion Requirement Establish a Pleading Requirement or an Affirmative Defense?*, 39 U.C. DAVIS L. REV. 247, 272 (2005).
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.* at 272–73

of administrative proceedings."[55] Moreover, because prison officials have control over the prison administrative procedures, they have the ability to make it difficult for prisoners to fulfill the exhaustion requirements,[56] thereby precluding the prisoner from bringing a valid suit in court.[57]

Overall, treating the exhaustion requirement as an affirmative defense, as opposed to an absolute bar, correctly balances between frivolous prisoner litigation and unduly burdensome pleading.

B. Compliance with prison grievance procedures is all that is required to "properly exhaust" a claim.

The Court went on to address what is needed to fulfill the "exhaustion" requirement of the PLRA. The Sixth Circuit judicially creates a rule that a claimant must specifically "name all of the defendants" in the first step of the grievance process to fulfill the "exhaustion" requirement of the PLRA. However, there is no textual basis in the PLRA for this requirement.[58] "Nothing in the MDOC policy itself supports the conclusion that the grievance process [is] improperly invoked simply because an individual later named as a defendant [is] not named at the first step of the grievance process."[59] The Court correctly held that the PLRA requirement of "proper exhaustion" is fulfilled by complete compliance with the prison grievance procedures.[60] "The level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion."[61]

C. The PLRA does not follow the total exhaustion rule.

The final issue the Court addressed concerns the total exhaustion rule and what happens when a claimant failed to exhaust some, but not all, of the claims asserted in the complaint.[62] PLRA section 1997

55. *Id.* at 273.
56. *Id.*
57. *Id.*
58. Jones v. Bock, 127 S. Ct. 910, 922 (2007).
59. *Id.*
60. *Id.* at 922–23.
61. *Id.* at 923.
62. *Id.*

states "[n]o action shall be brought" unless administrative procedures are exhausted.[63] The Court rejected the respondent's statutory interpretation of PLRA Section 1997e(a), which asserted that if Congress intended courts to dismiss only unexhausted claims while retaining the balance of the lawsuit Congress would have used the word "claim" rather than "action." The Court noted the statutory phrasing "no action shall be brought" is boilerplate language and that there were many instances where that same language was used, but that had not been thought to lead to the dismissal of an entire action where a single claim failed to meet the pertinent standards.[64] The norm is that if a complaint contains both good and bad claims, the court would leave the bad claims and continue with the good ones.[65] If Congress wanted to depart from this, it would have specifically made that clear in the PLRA.[66]

The Court noted that there was no indication of a congressional departure in this instance.[67] This is in line with the respondent's policy argument that because the PLRA was created as a tool for early judicial screening and a way to reduce the burden of prisoner litigation on the courts, the total exhaustion rule would allow courts to promptly dismiss an action upon identifying an unexhausted claim.[68] The Court was not persuaded by this argument and noted that the use of the total exhaustion rule would push inmates towards filing various separate claims, to avoid the possibility of an unexhausted claim tainting the others.[69] That would promote the opposite purpose of the PLRA.[70] Therefore, the total exhaustion rule does not apply to the PLRA.

V. CONCLUSION

The purpose of the PLRA was to address the large number of prisoner complaints filed in the federal courts and to provide a practical screening mechanism to help filter out unwarranted claims.[71]

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63. *Id.*
64. *Id.* at 924.
65. *Id.*
66. *Id.*
67. *Id.* at 925.
68. *Id.*
69. *Id.*
70. *Id.* at 925–26.
71. *Id.* at 914.

However, the Sixth Circuit seems to have used this law to exclude prisoner complaints on even the slightest and most minor of technicalities. By setting clear guidelines regarding what a prisoner must do to exhaust prison grievance procedures, this decision has helped to allay the confusion among circuits, among prisoners, and among attorneys. The lower courts can now be clear that: (1) failure to exhaust is an affirmative defense and inmates are not required to specially plead or demonstrate exhaustion in their complaints;[72] (2) compliance with prison grievance procedures is all that is required to "properly exhaust" a claim;[73] and (3) the PLRA does not require the dismissal of the entire complaint, when some, but not all, of the claims in the complaint have been exhausted.[74]

72. *Id.* at 918.
73. *Id.* at 922–23.
74. *Id.* at 924.