



Civil Rights Update

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Perttu v. Richards and its impact on the Seventh Circuit

On February 25, 2025, the United States Supreme Court will hear oral arguments in *Perttu v. Richards*, 145 S. Ct. 119 (2024), on the issue of whether, in cases subject to the Prisoner Litigation Reform Act, prisoners have a right to a jury trial concerning their exhaustion of administrative remedies where disputed facts regarding exhaustion are intertwined with the underlying merits of their claim.

Background

Kyle Richards, an inmate at Michigan's Baraga Correctional Facility, filed a lawsuit under 42 U.S.C. § 1983 against Resident Unit Manager Thomas Perttu based on allegations of sexual harassment, retaliation, and destruction of property. *Richards v. Perttu*, 96 F.4th 911, 915 (6th Cir. 2024), *cert. granted* 145 S. Ct. 119 (2024). In his retaliation claim, Richards alleges that Perttu prevented him from filing grievances related to Perttu's alleged sexual abuse by ripping up the grievances or otherwise destroying them. *Richards*, 96 F.4th at 915. The complaint lays out several instances where Perttu allegedly destroyed grievances that Richards had intended to file. *Id.* Richards also claims that Perttu threatened to kill him if he persisted in trying to file more grievances and that he was wrongfully held in administrative segregation for doing so. *Id.*

Perttu moved for summary judgment, arguing that Richards had failed to exhaust his legal administrative remedies pursuant to the Prisoner Litigation Reform Act (PLRA). *See* 42 U.S.C. § 1997e(a). Richards also moved for summary judgment, raising various First Amendment retaliation and Eight Amendment claims. The United States District Court denied Perttu's motion because questions of fact precluded summary judgment on the issue of exhaustion. The court also denied Richards' motion as premature. *Id.* at 916. An evidentiary hearing was later held by a magistrate judge in order to determine whether Richards had exhausted the administrative remedies.

The magistrate judge recommended that the district court find that Perttu had proved by a preponderance of the evidence that Richards had failed to exhaust his administrative remedies and that he had failed to prove that Perttu had prevented him from filing grievances. *Id.* The district court dismissed Richards' suit, concluding that he had failed to exhaust available administrative remedies. *Id.* However, the United States Court of Appeals for the Sixth Circuit reversed this decision and held that when factual disputes about administrative exhaustion are closely linked to the merits of the case, the Seventh Amendment guarantees the right to a jury trial to resolve these disputes. *Richards*, 96 F.4th at 916. A petition for a writ of certiorari to the United States Supreme Court was granted on October 4, 2024.



Significance to the Seventh Circuit

In coming to their decision, the Sixth Circuit noted that only one federal court of appeals has directly faced this same issue. In *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008), the United States Court of Appeals for the Seventh Circuit identified a “possible overlap between the factual issues relating to exhaustion and those relating to the merits of the [underlying] excessive-force claim” because the plaintiff’s broken arm was “an issue common to both the allegedly inexcusable failure to exhaust and the excessiveness of the force that caused the break.” *Pavey*, 544 F.3d at 741-42. The *Pavey* court observed that “not every factual issue that arises in the course of a litigation is triable to a jury as a matter of right, even if it is a suit at law, rather than in equity, within the meaning of the Seventh Amendment.” *Id.* at 741. According to the Seventh Circuit, “the generalization that emerges . . . is that juries do not decide what forum a dispute is to be resolved in. Juries decide cases, not issues of judicial traffic control.” *Id.* Any finding that the judge makes, relating to exhaustion, that might affect the merits may be reexamined by the jury if—and only after—the prisoner overcomes the exhaustion defense, and the case proceeds to the merits. *Id.* at 742. Until the issue of exhaustion is resolved, the court cannot know whether it is to decide the case or the prison authorities are to. *Id.*

The Sixth Circuit, however, was not persuaded by the Seventh Circuit’s analysis in *Pavey*. The court noted *Pavey* reasons that any finding by a judge relating to exhaustion that might affect the case’s merits may be reexamined by the jury. *Id.* at 742. But the rationale that a jury may reexamine the judge’s factual findings rings hollow if the prisoner’s case is dismissed for failure to exhaust his or her administrative remedies. The Sixth Circuit is of the opinion that *Pavey*’s fatal flaw is that a jury would never be assembled to resolve the factual disputes. *Pavey*, 544 F.3d at 921. The court concluded in opposition of the Seventh Circuit and held that that the Seventh Amendment requires a jury trial when the resolution of the exhaustion issue under the PLRA would also resolve a genuine dispute of material fact regarding the merits of the plaintiff’s substantive case. *Id.* In doing so, the court emphasized that a jury trial is appropriate in these circumstances only if the district court finds that genuine disputes of material fact concerning PLRA exhaustion exist and are decisive of the merits of the plaintiff’s claim. *Id.*

Arguments before the Supreme Court

Petitioner Thomas Perttu contended that allowing jury trials for disputes over administrative exhaustion undermines the PLRA’s objective of reducing frivolous inmate lawsuits. He argued that such preliminary issues should be resolved by judges to prevent unnecessary burdens on the judicial system. Perttu asserted that the Sixth Circuit’s ruling would lead to an influx of inmate-initiated cases reaching federal courts, thereby straining resources and potentially allowing meritless claims to proceed to trial.

Respondent Kyle Richards maintained that denying a jury trial in these circumstances violated the Seventh Amendment. He argued that when disputes over administrative exhaustion are entangled with the core issues of the case, a jury is constitutionally required to determine the facts. Richards emphasized that, without jury involvement, inmates could be unjustly barred from pursuing legitimate claims due to procedural technicalities, especially when prison officials are accused of obstructing the grievance process.



Implications

The United States Court of Appeals for the Sixth Circuit ruled in favor of Richards, determining that when factual disputes about exhaustion are intertwined with the merits of the case, the Seventh Amendment requires that a jury resolve these disputes. This decision is in contrast with the Seventh Circuit, which held that judges can resolve factual disputes regarding exhaustion without a jury, even if those disputes are connected to the case's merits.

This divide between the Sixth and Seventh Circuits has created a split that could have potential implications as to how cases are handled within the Seventh Circuit. If the Supreme Court upholds the Sixth Circuit's decision, it could mandate that, within the Seventh Circuit, juries must decide factual disputes related to administrative exhaustion when they overlap with the case's substantive issues. This could increase the number of inmate-initiated cases proceeding to jury trials, which could impact the resources and operations of county jails as well as the court system within the Seventh Circuit. Ultimately, the Supreme Court's decision in this case will have a significant impact on constitutional rights and prisoner litigation in one way or another under the PLRA.

About the Author

Serving in the criminal justice system as a 711 Attorney, a police officer, and a criminal prosecutor, primarily working narcotics and DUI offenses, provided **Alexeus E. Bender** of *Heyl, Royster, Voelker & Allen, P.C.* with a unique perspective on the law. In her young career, she has handled multiple jury and bench trials in Winnebago and Kane Counties and has successfully argued a variety of motions. Working out of the firm's Rockford office, Ms. Bender begins her tenure with a focus on Business and Commercial Litigation, Casualty & Tort, Medical Malpractice, Civil Rights Litigation/Section 1983 & Correctional Healthcare, and Long-term Care & Nursing Homes.

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