

832 Fed.Appx. 511 (Mem)

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3.

United States Court of Appeals, Ninth Circuit.

Demario ROBERTS, Inmate #398950; et al.,  
Plaintiffs-Appellants,

v.

Stephen SINCLAIR, in his official capacity as  
Secretary of the Washington Department of  
Corrections; et al., Defendants-Appellees,  
and

Julie Martin; et al., Defendants.

No. 19-35846

Argued and Submitted December 10, 2020 Seattle,  
Washington

FILED December 29, 2020

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Appeal from the United States District Court for the  
Western District of Washington, Ricardo S. Martinez,  
Chief District Judge, Presiding, D.C. No.  
2:18-cv-00837-RSM

Before: McKEOWN, HUNSAKER, and BUMATAY,  
Circuit Judges.

#### \*512 MEMORANDUM\*

Demario Roberts, Mohamed Mohamed, Jeremy Livingston, Naim Lao, and John James are current and former prisoners within the Washington Department of Corrections (“WDOC”). They appeal the district court’s denial of their motion for summary judgment and the grant of summary judgment to WDOC officials in connection with the provision of Ramadan-compliant meals and, in the case of one prisoner, a gluten-free Ramadan diet based on medical needs. The parties are familiar with the facts, so we discuss them below only as relevant. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review de novo a district court’s grant of summary judgment. *Albino v. Baca*, 747 F.3d 1162, 1168 (9th Cir. 2014) (en banc). The Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a), “requires that a prisoner challenging prison conditions exhaust available administrative remedies before filing suit.” *Id.* at 1165. The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*, “incorporates the administrative exhaustion requirements of the [PLRA].” *Fuqua v. Ryan*, 890 F.3d 838, 844 (9th Cir. 2018). But the PLRA has a “built-in exception to the exhaustion requirement: A prisoner need not exhaust remedies if they are not ‘available.’” *Ross v. Blake*, — U.S. —, 136 S. Ct. 1850, 1855, 195 L.Ed.2d 117 (2016). An administrative remedy is not available if “it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates”; if the administrative scheme is so opaque “that no ordinary prisoner can make sense of what it demands”; or if “prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.” *Id.* at 1859–60.

None of the prisoners fully exhausted the available administrative remedies. While James may have pursued the grievance process on an earlier claim, he did not exhaust the administrative process for his 2018 Ramadan grievance until after the amended complaint adding him to the case was filed, which means that his claims may not proceed. *See Cano v. Taylor*, 739 F.3d 1214, 1219–20 (9th Cir. 2014) (holding that a prisoner must exhaust prior to bringing suit or, in some situations, before the filing of an amended complaint). Because Mohamed, Roberts,

Livingston, and Lao could have appealed their grievances through the routine grievance process, they did not face a situation where they were unable to “pursue the necessary sequence of appeals.” *Sapp v. Kimbrell*, 623 F.3d 813, 823 (9th Cir. 2010). We are not in accord with the district court’s conclusion that the appeals process may not have been “made sufficiently clear to” Livingston and Lao. “[P]rocedures need not be sufficiently ‘plain’ as to preclude any reasonable mistake or debate with respect to their meaning.” *Ross*, 136 S. Ct. at 1859. Livingston and Lao do not advance this theory on appeal, and, as noted, they could have exhausted their claims by pursuing the routine appeals process. Administrative procedures therefore remained “available” to Mohamed, Roberts,

Livingston, and Lao, but they did not exhaust their grievances. *See id.* at 1859–60. Consequently, none of the prisoners’ claims may proceed, and the WDOC officials were entitled to \*513 summary judgment.<sup>1</sup>

**AFFIRMED.**

**All Citations**

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**Footnotes**

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

<sup>1</sup> Because the case is resolved on exhaustion grounds, Defendants-Appellees’ motion to supplement the record on appeal, Dkt. No. 23, is denied.