Circuit Court for Allegany County
Case No.: C-01-CV-24-000271

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1528

September Term, 2024

IN THE MATTER OF
WAYNE RESPER

Graeff,
Kehoe, S.,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 14, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Wayne Resper, appellant, is incarcerated in the Western Correctional Institution in Cumberland. In August 2024, Resper petitioned the Circuit Court for Allegany County for judicial review of a decision of the Incarcerated Individual Grievance Office. Resper did not attach to his complaint proof that he had exhausted his administrative remedies. Accordingly, the court ordered Resper to correct the deficiency within 30 days or his complaint would be dismissed. Resper failed to do so, and the court dismissed his complaint. This appeal followed.

We review dismissal of a complaint for legal correctness. *See Harris v. McKenzie*, 241 Md. App. 672, 678 (2019). Resper is a "prisoner" as defined by Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 5-1001(g). As such, he must "fully exhaust[] all administrative remedies for resolving [a] complaint or grievance" before filing a civil action. CJP § 5-1003(a)(1). Further, he must "attach proof of exhaustion of [his] administrative remedies to his complaint." *Harris*, 241 Md. App. at 681. Resper failed to do either.

On appeal, Resper contends that his failure should have been excused because there was no administrative remedy available for him to exhaust. Resper concedes that an administrative procedure existed for his claim and admits that he failed to follow that procedure. Yet, relying on *Ross v. Blake*, 578 U.S. 632 (2016), he argues that he should not have to do so because the grievance process "is incontrovertibly woeful, buffoonish[,] and an absolute waste of time and resources." We first note that no Maryland court has applied

Ross's interpretation of the federal Prison Litigation Reform Act of 1995 to our state's counterpart. But even if the case applies here, it does not aid Resper.

In *Ross*, the Supreme Court of the United States held that, under federal law, "an inmate is required to exhaust those, but only those, grievance procedures that are capable of use to obtain some relief for the action complained of." *Id.* at 642 (cleaned up). The Court noted "three kinds of circumstances in which an administrative remedy, although officially on the books, is not capable of use to obtain relief." *Id.* at 643.

First, "an administrative procedure is unavailable when (despite what regulations or guidance materials may promise) it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates." *Id. Second*, "an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use." *Id.* In such cases, "exhaustion is not required." *Id.* at 644. *Finally*, "the same is true when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Id.* Resper contends that the first and third kinds of unavailability apply here. He is wrong.

The first circumstance arises when, for example, "a prison handbook directs inmates to submit their grievances to a particular administrative office—but in practice that office disclaims the capacity to consider those petitions." *Id.* at 643. The third circumstance arises when officials devise procedural systems to "trip up all but the most skillful prisoners" or when "officials misle[ad] or threaten[] individual inmates so as to prevent their use of otherwise proper procedures." *Id.* at 644 (cleaned up). But neither circumstance arises when an incarcerated individual's grievances are regularly considered and denied on their

merits, as is the case here. Put simply, Resper's frustration with the results of his past grievances does not render the administrative procedures for addressing them unavailable. He was therefore required to exhaust them before filing a civil action. CJP § 5-1003(a)(1).

In the end, Maryland's Prisoner Litigation Act, "which is more onerous that its [f]ederal counterpart, *requires* the prisoner to attach proof of exhaustion of administrative remedies to his complaint." *Harris*, 241 Md. App. at 681 (cleaned up) (emphasis in original). Without such proof, "the court must dismiss the case[.]" *Id.* Neither *Ross*, nor Resper's contempt for the grievance process authorize him to sidestep state law and skip the mandatory administrative procedures. Resper's failure to exhaust his administrative remedies and to provide the circuit court with proof of exhaustion of those remedies renders the court's dismissal of his complaint legally correct.

JUDGMENT OF THE CIRCUIT COURT FOR ALLEGANY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.