# Supreme Court of Texas

No. 23-0290

Everick L. Monk,

*Petitioner*,

v.

Officer Massey, Lt. Vonn, Sgt. Pree, Bowie County Detention Center, et al., Steve Burton, Keith Clark, Brandon Harvel, Joshua Latham, Alan Owens, and S. Hodge,

*Respondents*

On Petition for Review from the
Court of Appeals for the Sixth District of Texas

JUSTICE YOUNG, joined by Justice Busby, dissenting from the denial of the petition for review.

This petition involves pro se inmate Everick Monk's attempt to sue other inmates who, he alleges, beat him severely enough to require hospitalization. He is also trying to sue several prison officials, including the guard who Monk claims instigated the attack. Those facts aside, the legal question is whether Monk may proceed *in forma pauperis*. To do so, he must satisfy Texas Civil Practice and Remedies Code § 14.004.[1]

[1] All statutory citations reference the Civil Practice and Remedies Code.

"Section 14.004 involves two procedural requirements that have no bearing on the underlying lawsuit: (1) filing an affidavit or declaration describing each pro se action previously b[r]ought by the litigant; and (2) filing a certified copy of the inmate's trust account statement." *McLean v. Livingston*, 486 S.W.3d 561, 565 (Tex. 2016).

Monk petitioned this Court after the court of appeals dismissed his appeal for failure to make the proper § 14.004 filings. That court had alerted Monk to his filing failure. Consistent with the holding in *McLean*, the court gave Monk a chance to cure the defects. *See id.* at 562 ("We hold that the court of appeals must allow the inmate an opportunity to amend his filings."). Monk tried to cure what the court of appeals saw as § 14.004 defects. According to that court, however, his attempt fell short. The court dismissed his appeal without reaching its merits.

Liberally construed, Monk's handwritten pro se filings raise this issue: After giving an inmate a chance to cure § 14.004 defects, may a court of appeals dismiss the inmate's appeal if defects remain, or must the inmate receive *another* opportunity to cure? I would hold that a court may dismiss the appeal, subject to review for an abuse of discretion.[2]

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[2] Without commenting on their merits, I note that many appellate cases similarly apply an abuse-of-discretion standard in reviewing § 14.004 dismissals. *E.g.*, *Clark v. J.W. Estelle Unit*, 23 S.W.3d 420, 421 (Tex. App.—Houston [1st Dist.] 2000, pet. denied) ("We review a trial court's dismissal of an inmate's claims under section 14.004 under an abuse of discretion standard."); *Adams v. State*, Nos. 13-11-00173-CV to 13-11-00176-CV, 2011 WL 4840963, at *4 (Tex. App.—Corpus Christi–Edinburg Oct. 13, 2011, pet. denied) ("We review a trial court's dismissal of a case for noncompliance with section 14.004 under an abuse-of-discretion standard."); *see Murray v. Polk County Sheriff Dep't*, No. 09-20-00200-CV, 2021 WL 922534, at *3 (Tex. App.—Beaumont Mar. 11, 2021, no pet.) (using "abuse-of-discretion review" in affirming determination

I would also hold, for two reasons, that the court of appeals abused its discretion here. First, Monk attempted in good faith to cure the § 14.004 defects; his attempt substantially cured the defects, and there is no indication the remaining defects, if any, were incurable. Second, the court's opinion dismissing Monk's case was conclusory and at least partially incorrect—it gave Monk no meaningful explanation for why his case was being dismissed on procedural grounds. These circumstances made it improper to dismiss for failure to comply with § 14.004.

The Court denies Monk's petition, which leaves any final resolution of these legal questions for another day and case. While further development in the lower courts of our State may be helpful, I think we have more than enough to resolve these questions now. I would grant the petition and reverse, so I respectfully dissent from the denial of the petition for review.

**I**

Monk is no public hero; he is serving a life sentence for two crimes, including aggravated sexual assault.[3] *See Monk v. State*, No. 06-23-00046-CR, 2024 WL 44962, at *1 (Tex. App.—Texarkana Jan. 4, 2024, no pet.) (affirming judgment of conviction). But he alleges that, in May 2022, he was at a Bowie County correctional center when several inmates beat

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that inmate's "affidavit failed to comply with section 14.004"); *Butler v. Collier*, No. 12-20-00124-CV, 2020 WL 7392887, at *2 (Tex. App.—Tyler Dec. 16, 2020, pet. denied) ("Because [the inmate] did not comply with the requirements of Section 14.004, the trial court did not abuse its discretion in dismissing [the inmate's] claim for failure to comply with Section 14.004(c).").

[3] *See Inmate Information Details*, Tex. Dep't Crim. Just., https://inmate.tdcj.texas.gov/InmateSearch/viewDetail.action?sid=19509674 (last visited June 26, 2024).

him so thoroughly as to require hospitalization. The inmates beat him, says Monk, because correctional officer Massey told the inmates that Monk "had a sex charge against children" and "was in for child molesting." Whether Monk's allegations have merit is not before us—the only question is whether Monk should have the right to ask a court to consider his claims, even if it quickly rules against him.

Monk brought his claims later in the same month of the alleged attack by filing a pro se civil suit against Massey, several other officers, and the inmates. With his filing, Monk submitted a Statement of Inability to Afford Payment of Court Costs, so that he could proceed *in forma pauperis*. *See* Tex. R. Civ. P. 145.

In December 2022, the district court sua sponte dismissed his suit because Monk "failed to include the required affidavit relating to any previous filings" under § 14.004(a). The court did not provide Monk notice of the omission or a chance to cure it before dismissing the case.

In January 2023, Monk appealed. He filed with his notice of appeal a Statement of Inability to Afford Payment of Court Costs or an Appeal Bond. But as in the trial court, he "did not file an affidavit or unsworn declaration of previous filings" under § 14.004(a). No. 6-23-00009-CV, 2023 WL 2733410, at *1 (Tex. App.—Texarkana, Mar. 31, 2023). Nor did he file "a certified copy of his inmate trust account statement" under § 14.004(c). *Id.*

By letter dated February 28, 2023, a deputy clerk for the court of appeals alerted Monk to both § 14.004 deficiencies.[4] To "avoid dismissal,"

[4] This letter is accessible online. *See* Sixth Court of Appeals, Tex. Jud. Branch, No. 06-23-00009-CV, https://search.txcourts.gov/Case.aspx?cn=06-23-

the clerk warned, Monk must correct the deficiencies by "no later than **March 30, 2023**." Monk responded speedily. On March 8, he executed a two-page notarized affidavit listing three previously filed cases. Attached was an Application to Proceed In Forma Pauperis on Appeal with a Detainee Transaction History (DTH) statement, which Monk suggests is his "inmate trust account." Monk's affidavit was filed with the court of appeals on March 13.[5]

Instead of alerting Monk to any problems, the court of appeals took no action until its March 30 deadline passed. The very next day, it dismissed Monk's appeal under § 14.004(a), (c) and § 14.006(f). (The latter provision is expressly incorporated by § 14.004(c).) The court explained that, although "Monk filed an affidavit of previous filings," the affidavit "did not set forth the operative facts of each case" under § 14.004(a)(2)(A). 2023 WL 2733410, at *1. He "also did not comply with [the] directive to file a certified copy of his inmate trust account statement" under § 14.004(c) and § 14.006(f). *Id.* The court thus dismissed the appeal, noting that Monk had received a chance to cure the defects. *Id.* at *2. Monk petitioned this Court for review in April 2023.[6]

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00009-CV&coa=coa06 (last visited June 26, 2024) ("Case Events" corresponding to "02/28/2023" filing).

[5] The affidavit is also accessible online. *See supra* note 4 ("Case Events" corresponding to "03/13/2023" filing).

[6] In August 2023, Monk filed another petition for review in this Court, No. 23-0635. Monk described that petition as an "Appeal for his original civil case #22C0548-202," *i.e.*, the same trial case number from which he took his appeal in No. 23-0290. Having already dismissed what is now No. 23-0290 in this Court, the same court of appeals accordingly dismissed what is now No. 23-0635. *See* No. 6-23-00019-CV, 2023 WL 3831823, at *1 (Tex. App.—Texarkana June 6, 2023) ("We have disposed of Monk's direct appeal from the final

## II

Chapter 14 applies to "an action, including an appeal or original proceeding, brought by an inmate in a district, county, . . . or an appellate court, including the supreme court . . . , in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate." *See* § 14.002.[7] To ensure that an inmate is not abusing the right to proceed without paying generally applicable fees that other litigants must pay, § 14.004 requires inmates like Monk to separately file an affidavit identifying and describing their previously brought actions in some detail, including stating each action's "operative facts":

> (a) An inmate who files an affidavit or unsworn declaration of inability to pay costs shall file a separate affidavit or declaration:
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> (1) identifying each action . . . previously brought by the person and in which the person was not represented by an attorney, without regard to whether the person was an inmate at the time the action was brought; and
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> (2) describing each action that was previously brought by:
>
> (A) stating the *operative facts* for which relief was sought;
>
> (B) listing the case name, cause number, and the court in which the action was brought;
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> (C) identifying each party named in the action; and
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> (D) stating the result of the action, including whether the action or a claim that was a basis for the action was dismissed as frivolous or malicious under Section

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judgment in this case, and there is no other appealable order or judgment in the record currently before this Court."). Today, the Court denies this duplicative petition for review. Had we granted and decided *this* petition—No. 23-0290—I would have voted to dismiss No. 23-0635 as moot.

[7] *See infra* note 8 (discussing Monk's indigency filings in this Court).

13.001 or Section 14.003 or otherwise.

*Id.* § 14.004(a) (emphasis added).

Section 14.004(c) adds that the "affidavit or unsworn declaration must be accompanied by the certified copy of the trust account statement required by Section 14.006(f)." Section 14.006(f), in turn, requires the inmate to file such a statement, which "must reflect the balance of the account at the time the claim is filed and activity in the account during the six months preceding the date on which the claim is filed."[8]

These requirements are not mere hoops through which inmates must jump before they may proceed *in forma pauperis*. Proper § 14.004 filings help a court discharge its duty of denying *in forma pauperis* status to unworthy inmate litigants—those who *do* have the funds to pay court fees or those who have repeatedly abused the legal system by filing frivolous cases. *See Warner v. Glass*, 135 S.W.3d 681, 685 (Tex. 2004) ("The Legislature intended for Chapter 14 to reduce frivolous inmate litigation."). The legislature has reasonably concluded that inmates in either category should not be able to litigate on the public dime. Accordingly, Chapter 14 provides that a "court may dismiss a claim . . . if the court finds" the inmate's "allegation of poverty" to be false or if the inmate's underlying claims are "frivolous or malicious." § 14.003(a)(1)–(2); *see also Warner*, 135 S.W.3d at 685 ("Section 14.003 continues to give

[8] On August 23, 2023, Monk filed in this Court an Application to Proceed In Forma Pauperis with documentation showing Monk has $8.46 to his name as of July 2023, and that he had $0.00 in the five months preceding July. There is no indication he filed an affidavit with this Court, but he has incorporated the affidavit he filed with the court of appeals by reference. *See infra note* 13 and accompanying quote. Liberally construed, his petition suggests that filing another affidavit would be futile.

courts *discretion* to dismiss a 'frivolous or malicious' claim . . . ." (emphasis added)). A claim is "frivolous or malicious" where, for example, "the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts." § 14.003(b)(4). *Cf.* § 14.004(a)(2)(A) (requiring the inmate to state the "operative facts" of his previously brought actions). The same section also allows dismissal where "the inmate filed an affidavit or unsworn declaration required by this chapter [*i.e.*, a § 14.004 affidavit] that the inmate knew was false." § 14.003(a)(3).

Absent from Chapter 14, however, is instruction on how courts should proceed when an inmate files a § 14.004 affidavit that (perhaps unknowingly to the inmate) is defective or otherwise incomplete. *See also McLean*, 486 S.W.3d at 562 ("The statute details when a claim may be dismissed based on the information provided . . . , but the statute does not address the failure to file either the declaration of prior actions or the certified copy of the inmate's trust account statement altogether."). This Court has concluded that a "court of appeals must give an inmate an opportunity to cure a section 14.004 filing defect in an appellate proceeding, through an amended filing, before the court can dismiss the appeal." *Brown v. Jones*, 494 S.W.3d 727, 728 (Tex. 2016) (citing *McLean*, 486 S.W.3d at 564, and *Ex Parte N.C.*, 486 S.W.3d 560 (Tex. 2016)).

Monk's petition presents a permutation from that conclusion: Must a court of appeals (or trial court) give an inmate a *second* opportunity to cure? In my view, a court should not have to do so automatically or as a matter of course. The court may, in its discretion, dismiss the inmate's appeal. A court would properly exercise its discretion to dismiss the

appeal where the inmate: does not substantially cure the defects in his or her first curative attempt; does not work diligently to cure the defects; refuses to cure them; or ignores or defies the court's order giving the inmate a chance to cure (such as disregarding basic instructions). Another example is where allowing a further curative chance would be futile, perhaps because a separate (and statutorily authorized) dismissal basis exists under Chapter 14. I do not list all the examples here; in each case, the decision should be subject to the court's discretion given the statutory requirements and the case's circumstances.

But a court's discretion also should be subject to review. It is "clear that Texas favors a policy allowing an appellant the opportunity to cure a procedural defect so that a case may be decided on its merits." *McLean*, 486 S.W.3d at 565; *see also Peña v. McDowell*, 201 S.W.3d 665, 665–66 (Tex. 2006) (stating that a § 14.004 defect "may be corrected through an amended pleading, so a dismissal with prejudice is not appropriate"). Section 14.004 dismissals that seem conclusory, arbitrary, or simply incorrect should be scrutinized. Dismissals based on a legally erroneous understanding of the statutory requirements would constitute an abuse of discretion, because a court always "abuses its discretion when it makes an error of law." *In re Rudolph Auto., LLC*, 674 S.W.3d 289, 302 (Tex. 2023) (quoting *Koon v. United States*, 518 U.S. 81, 100 (1996)); *see also Brewer v. Lennox Hearth Prods., LLC*, 601 S.W.3d 704, 717 (Tex. 2020) ("A trial court abuses its discretion if it acts without reference to guiding rules and principles such that the ruling is arbitrary or unreasonable."). A dismissal that punishes an inmate who is clearly doing his or her best to comply or who has not received notice of any deficiencies, or who has

been prevented by third parties from complying, is likewise suspect. This is especially so given that § 14.004 does not expressly authorize dismissal for defective filings in the first place, and doubts should be resolved in favor of granting access to our courts rather than denying it.

## III

The court of appeals abused its discretion in dismissing Monk's appeal. The court properly gave Monk an initial chance to cure what it regarded as his § 14.004 defects. Monk acted diligently and in good faith to cure them; his attempt substantially cured them; and any remaining defects seem curable (if they are defects at all). The court's determination that he failed to cure is conclusory, and at least partially incorrect.

### A

The court of appeals' deputy clerk sent Monk the deficiency letter on February 28, 2023. When it got to Monk, he acted promptly. He prepared his notarized affidavit by March 8, signaling that he wanted to obey the court's directive. The affidavit was filed by March 13, seventeen days before the March 30 deadline—again signaling promptness and the intent to comply. Between March 13 and March 30, the court did not alert Monk to any remaining defects. Instead, on March 31, the court dismissed Monk's appeal.

Substantively, Monk's affidavit takes aim at the smorgasbord of requirements in § 14.004(a). He identifies three previous actions by case number, presiding judge, nature (*e.g.*, "Prisoner Civil Rights"), and status (*e.g.*, "Pending"). Respondents assert "there is nothing in the record that reflects a list of previous lawsuits in the trial court or lower court—much

less any 'operative facts' or other requirements." But Monk *did* provide an affidavit listing previous lawsuits.[9] Even the court of appeals acknowledged this much. 2023 WL 2733410, at *1 ("In response to our letter, Monk filed an affidavit of previous filings . . . .").

Aside from omitting the "operative facts of each case," the affidavit satisfied the court that Monk complied with § 14.004(a). And the affidavit—liberally construed—satisfies the operative-facts requirement for at least two of the three previous actions. One action is this case, to which § 14.004(a) presumably does not apply (because this case's identity and description are unquestioned, and it is this very case for which he seeks *in forma pauperis* status). Obviously, this case could not yet have a "result" that § 14.004(a)(2)(D) required him to list, and so could hardly be the basis for denying *in forma pauperis* status. Assuming Monk must state this case's operative facts (which I doubt), liberally construing his affidavit reveals that he did so by incorporating those facts by reference.

The other two actions were filed in the U.S. District Court for the Eastern District of Texas.[10] Monk indicated they were "pending," and by all indication that representation was true. It is not clear—and certainly this Court never has held—that a *pending* action is even relevant to the § 14.004(a) list. Again, § 14.004(a)(2)(D) anticipates the list indicating

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[9] The affidavit is not in the clerk's record, but rather, on the court of appeals' website. *See supra* note 5.

[10] The first is *Monk v. Massey*, No. 5:22-cv-00098-RWS-JBB, 2023 WL 9110925 (E.D. Tex. Aug. 11, 2023) (recommending dismissal in part), *rec. adopted*, 2023 WL 8369474 (E.D. Tex. Dec. 4, 2023), from which Monk has taken an interlocutory appeal. The second is *Monk v. Turn Key Medical*, where there appears pending a motion for reconsideration of the court's final judgment dismissing Monk's case for failure to exhaust administrative remedies, *see* No. 5:21-cv-00146-RWS-JBB, ECF Nos. 64, 65, 70 (E.D. Tex. 2024).

"*the result of the action*, including whether the action or a claim that was a basis for the action was dismissed as frivolous or malicious" under any source of law. (Emphasis added.)[11]

Perhaps the legislature intended even pending cases to be listed—but it certainly is not clear, and the quoted text supports the opposite. After all, a pending case would not aid a court trying to determine whether a past case has been deemed frivolous, which would support treating the inmate as a serial abuser of the system. But to the extent it is relevant, one pending action arises from the *same* facts as this one, and liberally construed, incorporates those facts by reference.[12] Monk did not state the operative facts for the third case—the remaining federal case. But for the reasons stated, Monk may not have needed to list that case at all, and *at most* it means that Monk omitted operative facts for one action. The court of appeals' statement that he omitted them for "each case" was thus conclusory, if not simply incorrect.

**B**

Also conclusory was the court of appeals' assertion that Monk failed to include a certified copy of his inmate trust-account statement under § 14.004(c). The affidavit included his DTH statement, which the

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[11] Whether § 14.004 is altogether inapplicable to "pending actions" appears to be an open question.

[12] On page 2 of his affidavit, Monk explains that he filed it in federal court "simply because the Judge" in this state case "has shown biased [sic] and is preventing him his day in court." *See also Monk*, No. 5:22-cv-00098-RWS-JBB, 2023 WL 9110925, at *1 (federal court discussing Monk's amended complaint) ("Plaintiff states that early in the morning on May 9, 2022, . . . he heard Officer Massey tell an inmate . . . that Plaintiff was in jail on child molestation charges. Other gang members were told of this . . . . He denied that he was charged with child molestation, but they attacked and beat him.").

court did not analyze. It is unclear to me (and maybe Monk) whether a DTH statement is a trust-account statement. Monk filed similar DTH statements with the trial court, which did not dismiss under § 14.004(c).

Even assuming the DTH statement is a trust-account statement, the one Monk attached to his affidavit appears uncertified and outdated, showing transactions from October 2021 to February 2022 instead of the six-month period preceding the date Monk filed his appeal. *See* § 14.006(f). Yet Monk apparently requested proper copies of his inmate trust-account statement but, for unknown reasons, his requests were unprocessed or unfulfilled. Ultimately, the DTH statement may reflect Monk's best-or-only proof of indigence: $0.00 to his name—and $108.97 he *owed* for his medications—as of February 2022.

As far as can be seen, he sought to comply. The court of appeals can require him to supply an updated and certified copy with exactitude if it desires, but the trust-account statement serves a particular purpose: to ensure that Monk is not financially disqualified from proceeding *in forma pauperis*. There is little reason to think that Monk—in debt for his own medicines—since became flush with cash. The court of appeals seemed to acknowledge as much. Its judgment, which respondents quote in their brief, states "that the appellant, Everick L. Monk, has *adequately indicated* his inability to pay costs of appeal" such that the court would "waive payment of costs." (Emphasis added.) This conclusion seems right, but it is inconsistent with dismissing his appeal because of an omitted trust-account statement. It misses the statute's point—ensuring actual and not fake indigency. No inescapably plain text, or indeed any text at all, requires dismissal here. If the court was satisfied of Monk's

"inability" to afford costs, the court could cite § 14.004(c) or § 14.006(f) for a procedural dismissal only if those provisions require more than Monk provided *and* if complying with the court's inflexible reading of those provisions was, for its own sake, both mandatory and incurable.

In fact, the law is not so rigid. The statute's practical purpose is reflected in its text. Section 14.006(f) addresses how the court *can assure itself*, if any doubt remains, of how much money the inmate has: "The court may request the department or jail to furnish the information required under this subsection." Dismissing an appeal because of an omitted (or stale) trust-account statement was needlessly harsh when the statement is there to help the court make a financial decision about filing fees *and gives the court an alternative way to get information if the court wants it*. By providing such a tool to verify genuine indigency, the statute does not manifest a legislative demand to slam the courthouse doors shut on litigants whom the courts *know* are genuinely indigent. Here, the court apparently needed no more information to be persuaded of Monk's indigency. Dismissal did not honor the statute; it constituted "resort to an arid ritual of meaningless form." *Staub v. City of Baxley*, 355 U.S. 313, 320 (1958).

**C**

Monk's affidavit coupled with his DTH statement—filed seventeen days *before* the deadline—reflects a good-faith effort to comply with § 14.004 and to get on with his case. Even assuming that the court of appeals was technically correct to say his filing did not 100% cure the statutory deficiencies, his filing substantially cured them. The court should have clearly explained to Monk why his affidavit was still deficient

and given him a chance to cure—which it could have done even before its March 30 deadline, given that Monk gave the court everything he *thought* it wanted by March 13. Such a course would have better enabled this Court to determine whether the court of appeals properly exercised its discretion in dismissing Monk's case.

My review leaves me doubtful that the court properly exercised its discretion. In addition to Monk's good faith and substantial cure, nothing indicates that any remaining defects were incurable or that Monk would refuse to cure them. To the contrary, Monk thought he *had* cured them:

> [I] submitted to the Court of Appeals a copy of [my] Inmate Account Fund as provided by the Office . . . . Also, that [I] did forward a[] signed affidavit and listed all lawsuit cases, in what court and whether pending or not, that's all I am aware to do, I am pro-se an[d] not an attorney[;] it was notarized by Mr. Dorsey and this should have fulfilled all the court[']s requirements so why or how have they still dismissed my appeal[?][13]

His confusion is understandable. The court's analysis was conclusory, if not incorrect. The court strictly (and perhaps erroneously) enforced § 14.004, a procedural statute, against a pro se litigant. Doing so was inconsistent with Texas policy, which favors resolution on the merits. It was inconsistent with the mandate to read statutes—when possible—as not denying access to the courts.

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Trial courts and courts of appeals experience a volume of pro se inmate cases from which this Court is largely immune. But Texas policy favoring merits rather than procedural dispositions applies to inmates,

[13] This excerpt is from Monk's petition for review.

too. Courts enjoy discretion to dismiss inmate appeals under § 14.004 after giving the inmate a chance to cure defects. This case shows how courts can exceed that discretion. Given that Monk's appeal served to contest the district court's *own* dismissal on this same ground, I would reverse and remand to the district court to either determine *in forma pauperis* status or to give Monk leave to cure—and, if Monk established his indigency, the court would then address the merits.[14] This Court instead denies the petition for review, so I respectfully dissent.

Evan A. Young
Justice

**OPINION FILED:** June 28, 2024

[14] Separately, respondents' brief "agrees with the trial court's memorandum opinion that Respondent failed to exhaust all administrative remedies prior to filing suit in state court." Assuming that by "Respondent" they refer to petitioner Monk, the lower courts did not address whether Monk exhausted his administrative remedies. As discussed above, Monk has filed a very similar—if not identical—case in federal court. *See supra* notes 10 & 12 and accompanying text. On page 3 of his live pleading there, Monk answers "No" to whether he exhausted all steps of the institutional grievance procedure. No. 5:22-cv-00098-RWS-JBB, ECF No. 14 (E.D. Tex. filed Nov. 14, 2022). He writes in, however, that he tried to exhaust, but the "Jail administrator[] has failed to reply and continue to delay. So I proceed onward." *Id.* Whether Monk's case should have separately been dismissed for failure to exhaust administrative remedies is an issue that I would have left to be raised in the first instance on remand; the record and briefing do not facilitate resolving a potential administrative-exhaustion issue in the first instance.