EXHIBIT A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6423

KEVIN YOUNGER,

Plaintiff – Appellee,

v.

NEIL DUPREE,

Defendant – Appellant,

and

JEMIAH L. GREEN; RICHARD N. HANNA; KWASI H. RAMSEY; WALLACE SINGLETARY; TYRONE CROWDER,

Defendants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Richard D. Bennett, Senior District Judge. (1:16-cv-03269-RDB)

Argued: May 9, 2024 Decided: June 17, 2024

Before KING, GREGORY, and RUSHING, Circuit Judges.

Affirmed by unpublished opinion. Judge King wrote the opinion, in which Judge Gregory and Judge Rushing joined.

ARGUED: Brian Williams, ARNOLD & PORTER KAYE SCHOLER LLP, Denver, Colorado, for Appellant. Samuel Paul Morse, WHITEFORD, TAYLOR & PRESTON,

L.L.P., Baltimore, Maryland, for Appellee. **ON BRIEF:** Brian E. Frosh, Attorney General, Karl A. Pothier, Assistant Attorney General, Shelly E. Mintz, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland; R. Stanton Jones, Andrew T. Tutt, Dana Or, John Hoover, ARNOLD & PORTER KAYE SCHOLER LLP, Washington, D.C., for Appellant. David Daneman, WHITEFORD, TAYLOR & PRESTON, L.L.P., Baltimore, Maryland; Allen Eisner Honick, FURMAN HONICK LAW, Owings Mills, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

KING, Circuit Judge:

In this 42 U.S.C. § 1983 action arising from a brutal prison guard attack on inmates, a jury in the District of Maryland found defendant-appellant Neil Dupree and four codefendants liable for violating plaintiff Kevin Younger's Fourteenth Amendment due process rights and awarded Younger $700,000 in damages. We previously dismissed Dupree's appeal, *see Younger v. Dupree*, No. 21-6423 (4th Cir. Mar. 11, 2022), ECF No. 40 ("*Dupree I*") (unpublished), but the Supreme Court vacated our judgment and remanded for further proceedings, *see Dupree v. Younger*, 598 U.S. 729 (2023) ("*Dupree II*"). Shortly thereafter, our Court rendered a decision in the separate appeal of Dupree's codefendant Tyrone Crowder, involving the same contention raised by Dupree herein. *See Younger v. Crowder*, 79 F.4th 373 (4th Cir. 2023). Having since obtained supplemental briefing and conducted oral argument in this appeal regarding the impact of *Dupree II* and *Crowder*, we now affirm the district court's judgment against Dupree.

I.

A.

We begin with the facts and early procedural history of this matter, as recited in our *Dupree I* opinion:

> The dispute giving rise to this litigation stems from an assault that occurred on September 30, 2013, at the Maryland Reception, Diagnostic & Classification Center, a state prison in Baltimore, where Younger was a pretrial detainee. That morning, three prison guards attacked Younger and other inmates at the direction of Dupree, who served as an intelligence lieutenant at the prison. Younger was asleep when the guards entered his

cell. The assailants promptly grabbed Younger and threw him from his bunk to the concrete floor. They assaulted Younger by slamming his head against a toilet and striking his face, head, and body multiple times using handcuffs and other objects. Having beaten Younger severely, the guards left him on the floor of his cell, unconscious and bleeding profusely. Younger did not receive appropriate and timely medical attention. Several months after the incident, Younger was flown to a hospital for treatment of the injuries he sustained to his head and leg. The prison guards who executed the attack on Younger and the other inmates were criminally convicted for their actions, and the prison's warden was forced to resign.

On September 28, 2016, Younger initiated this 42 U.S.C. § 1983 action against Dupree and several other prison employees, including the warden and the three prison guards who assaulted him. By his Complaint, Younger alleged, inter alia, violations of the Eighth and Fourteenth Amendments to the Constitution. On July 30, 2019, Younger filed his operative Amended Complaint, again pursuing § 1983 claims under the Eighth and Fourteenth Amendments. In his claims, Younger contended that Dupree and his codefendants had used excessive force against him during the 2013 assault, in contravention of Younger's Fourteenth Amendment due process rights.

On November 18, 2019, Dupree moved for summary judgment, maintaining, in relevant part, that Younger's claims are barred because he failed to exhaust his available administrative remedies — as required by the PLRA — before initiating his § 1983 action. *See* 42 U.S.C. § 1997e(a). Shortly thereafter, on December 19, 2019, the district court rejected Dupree's exhaustion contention and denied his summary judgment motion. *See Younger v. Green*, No. 1:16-cv-03269 (D. Md. Dec. 19, 2019), ECF No. 217 (the "Denial Opinion"). As the Denial Opinion explained, the PLRA does not bar Younger's claims because the administrative remedy identified by Dupree was "not truly available in any meaningful sense and Younger was not required to pursue it." *See* Denial Opinion 14 (internal quotation marks omitted).

The litigation thereafter proceeded to the 10-day jury trial. On February 4, 2020, the jury returned its verdict in favor of Younger, finding Dupree and four of his codefendants liable under § 1983 for violating the Fourteenth Amendment's due process protections. The jury awarded

> Younger the sum of $700,000 in damages, and the district court entered its judgment in Younger's favor that same day.
>
> Dupree thereafter filed a post-trial motion seeking a remittitur with respect to the verdict, and the district court denied that motion. . . . Dupree did not therein reassert his PLRA exhaustion contention that had been rejected by the Denial Opinion.

See Dupree I, slip op. at 3-5 (footnote omitted).

B.

1.

Turning to the details of Dupree's appeal, his sole argument is that the district court erred in rejecting his summary judgment contention that Younger's § 1983 claims are barred because he failed to exhaust his available administrative remedies, as required by the PLRA. In dismissing the appeal by our *Dupree I* opinion of March 11, 2022, we relied on our precedent that we would "'not review, under any standard, the pretrial denial of a motion for summary judgment after a full trial and final judgment on the merits,' when the issue rejected pretrial has not been pursued in the district court by way of a post-trial motion." *See Dupree I*, slip op. at 5-6 (quoting *Chesapeake Paper Prods. Co. v. Stone & Webster Eng'g Corp.*, 51 F.3d 1229, 1237 (4th Cir. 1995)). We also invoked our precedent "that the rule specified in *Chesapeake* applie[d] to appellate review of not only factual issues, but also purely legal ones." *Id.* at 6 (citing *Varghese v. Honeywell Int'l, Inc.*, 424 F.3d 411, 423 (4th Cir. 2005)).

We concluded in *Dupree I* that "[b]ecause the circumstances of this appeal fall precisely within the confines of our *Chesapeake-Varghese* precedent, the exhaustion issue

raised by Dupree [was] not properly before us and our review thereof [was] precluded." *See Dupree I*, slip op. at 9. That is, "adher[ing] to our *Chesapeake-Varghese* precedent," we determined ourselves to be constrained to "dismiss this appeal." *Id.*

2.

After our dismissal, Dupree successfully sought certiorari in the Supreme Court. By its *Dupree II* decision of May 25, 2023, the Supreme Court vacated our judgment and remanded for further proceedings. *See Dupree II*, 598 U.S. at 738. In so doing, the Supreme Court held — contrary to our *Chesapeake-Varghese* precedent — that a post-trial motion "is not required to preserve for appellate review a purely legal issue resolved at summary judgment." *Id.* at 736. The Supreme Court, however, did "not decide whether the issue Dupree raised on appeal is purely legal," leaving it to our Court to "evaluate that and any other properly preserved arguments in the first instance." *Id.* at 738.

3.

Following that remand, on August 24, 2023, our Court issued the *Crowder* decision resolving the appeal of Dupree's codefendant, who asserted the same PLRA exhaustion contention against Younger. *See Crowder*, 79 F.4th at 377. And like Dupree, "Crowder raised Younger's purported failure to exhaust at summary judgment and on appeal, but not in a [post-trial] motion." *Id.* Thus, our *Crowder* panel was tasked by the Supreme Court's *Dupree II* decision to determine whether the PLRA exhaustion contention is a "purely legal issue" that did not have to be re-raised in a post-trial motion in order to preserve it for appeal. *Id.* at 377-78 (explaining that although "the Supreme Court expressly declined to answer this question in *Dupree* [*II*], it did provide us with some guidance"). Heeding the

Dupree II guidance, the *Crowder* decision ruled that the PLRA exhaustion contention is indeed a purely legal issue that Crowder did not forfeit. *Id.* at 378-79.

Accordingly, our *Crowder* panel proceeded to the merits of the PLRA exhaustion contention. *See Crowder*, 79 F.4th at 379. That is, Judge Richardson engaged in a thorough analysis of whether Younger's § 1983 claims are barred by the PLRA because he failed to exhaust his available administrative remedies. *Id.* at 379-81. Emphasizing that "[a]n inmate need only exhaust administrative remedies that are 'available,'" the *Crowder* decision concluded that "[n]o administrative remedies were available to Younger, so he did not fail to properly exhaust." *Id.* at 379 (quoting 42 U.S.C. § 1997e(a)).

C.

With the benefit of the Supreme Court's decision in *Dupree II* and our decision in *Crowder*, we now recognize that Dupree was not required to present his PLRA exhaustion contention in a post-trial motion and has properly preserved it for appellate review. We further recognize, however, that the PLRA exhaustion contention fails on the merits pursuant to *Crowder*'s ruling that Younger had no available administrative remedies to exhaust. Although Dupree would have us rule otherwise — that administrative remedies were available to Younger and he inexcusably failed to exhaust them — we are bound by our *Crowder* precedent. *See McMellon v. United States*, 387 F.3d 329, 332 (4th Cir. 2004)

(en banc) (underscoring "the basic principle that one panel cannot overrule a decision issued by another panel").*

II.

Pursuant to the foregoing, we reject Dupree's PLRA exhaustion contention and affirm the judgment of the district court.

AFFIRMED

* Dupree has filed a separate motion to certify the exhaustion question to the Supreme Court of Maryland. We do not deem such a certification to be warranted and thus deny Dupree's motion.

EXHIBIT B

FILED: August 12, 2024

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O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk