

Opinions for the week of February 10 – February 14, 2020

Charles Curry v. Revolution Laboratories, LLC No. 17-2900

Argued September 11, 2019 — Decided February 10, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:17-cv-02283 — **Matthew F. Kennelly**, *Judge*.
Before RIPPLE, ROVNER, and BARRETT, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Charles Curry brought this action pro se in the district court, alleging that Revolution Laboratories, LLC (“Revolution”), Rev Labs Management, Inc. (“Management”), and Joshua and Barry Nussbaum (collectively the “defendants”) had infringed and diluted his trademark, violated the Illinois Consumer Fraud and Deceptive Practices Act, violated the Illinois Uniform Deceptive Trade Practices Act, engaged in false advertising and cybersquatting, and filed a fraudulent trademark application. Revolution is a limited liability company that is in the business of selling sports nutritional supplements and apparel. Management is a corporation that was formed for the sole purpose of being the manager of Revolution. According to Mr. Curry, Joshua and Barry Nussbaum co-founded Revolution and Management. Joshua Nussbaum is the President of Management and Revolution; Barry Nussbaum is the Director of Management and the Chief Executive Officer of Revolution. The defendants moved to dismiss Mr. Curry’s suit for lack of personal jurisdiction. The district court dismissed the action, holding that it lacked personal jurisdiction. Mr. Curry timely appealed that decision to this court.⁵ We respectfully disagree with the district court’s ruling and hold that the district court did have personal jurisdiction over Revolution. Accordingly, we reverse the judgment of the district court and remand the case for further proceedings consistent with this opinion.

Heon Lee v. Hillary Clinton No. 19-2786

Submitted February 10, 2020 — Decided February 11, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18 C 8294 — **Harry D. Leinenweber**, *Judge*.
Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Heon Seok Lee, a Korean national, was extradited to the United States, where a jury found him guilty of five counts of wire fraud, 18 U.S.C. § 1343, and three counts of fraudulent importation of goods into the United States, 18 U.S.C. § 545. He was sentenced to twelve months’ imprisonment. We affirmed Lee’s conviction and sentence on appeal. *United States v. Lee*, 937 F.3d 797 (7th Cir. 2019). In the meantime, Lee sued virtually everyone involved in his prosecution under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). He challenged the constitutionality of his extradition, detention, and prosecution on multiple grounds, alleging that he was extradited and detained without probable cause, that prosecutors and other federal officials conspired to present a false indictment to the grand jury, enter fake evidence at trial, and create a false presentence investigation report, and that the court lacked jurisdiction to prosecute him. Lee sought billions of dollars in damages and the dismissal of his indictment. The district court determined that Lee’s claims necessarily implied the invalidity of his conviction or sentence and dismissed the complaint pursuant to *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994)....We note that Lee is no longer imprisoned, having been released in January 2019, but the Heck bar applies nonetheless. *Savory v. Cannon*, 947 F.3d 409, 420 (7th Cir. 2020) (en banc); see *McDonough v. Smith*, 139 S. Ct. 2149, 2159 (2019). AFFIRMED

USA v. Peter Bernegger Nos. 19-2052 and 19-2415

Submitted February 10, 2020 — Decided February 11, 2020

Case Type: Criminal

Eastern District of Wisconsin. No. 18-CR-223 — **William C. Griesbach**, *Judge*.
Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

In these consolidated appeals, Peter Bernegger challenges modifications to the conditions of his supervised release requiring him to make monthly restitution payments and to disclose information about

his finances. But his term of supervised release has already ended, and he cannot show that he suffers any collateral consequences, so we lack jurisdiction to review the orders he challenges....The modification orders did no more than require Bernegger to pay a portion of what he already owed as part of the judgment in his criminal case, see *United States v. Sawyer*, 521 F.3d 792, 797 (7th Cir. 2008), and facilitate his inevitable contact with the Financial Litigation Unit. Bernegger's restitution obligation survived his completion of his term of supervised release, and that obligation has been previously affirmed on direct appeal. See *United States v. Bernegger*, 661 F.3d 232, 242 (5th Cir. 2011). In these appeals, we cannot grant him any effective relief from supervised-release conditions to which he is no longer subject. See *Calderon v. Moore*, 518 U.S. 149, 150 (1996); cf. *Pope v. Perdue*, 889 F.3d 410, 414 (7th Cir. 2018) (criminal appeal not moot if there is "any potential benefit" to defendant (quoting *United States v. Trotter*, 270 F.3d 1150, 1152 (7th Cir. 2001))). Insofar as he seeks the return of \$300 he believes he paid according to an improperly entered payment schedule, we cannot undo the court's condition after it has expired. And he cannot argue that he did not owe the money. Bernegger asserts that he was forced to go into debt to satisfy the payment schedule, but that is not the type of ongoing injury that would save these appeals. See *Lane*, 455 U.S. at 632–33 (explaining qualities of "civil disabilities" and legal consequences that can keep a direct criminal appeal live). DISMISSED

Eric Conner v. Jolinda Waterman No. 19-2317

Argued January 29, 2020 — Decided February 11, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 17-CV-948 — **David E. Jones**, *Magistrate Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Eric Conner contends that staff members at a prison in Wisconsin violated the Cruel and Unusual Punishments Clause of the Eighth Amendment, applied to the states by the Fourteenth, when they did not ensure that he always received a medicated cream to treat his dry and cracking feet. The parties consented, 28 U.S.C. §636(c), to decision by a magistrate judge, who awarded summary judgment to the defendants. Conner has spent a good deal of his prison time in what Wisconsin calls an observation cell. When released from observation he threatens self-harm. He does not carry through on the threats, which a psychologist has concluded are manipulative, but they precipitate return to an observation cell. (He has sued over his occasional removal from observation cells, though he was unsuccessful. *Conner v. Rubin-Asch*, No. 19-1626 (7th Cir. Nov. 4, 2019) (nonprecedential decision).) But while he is in an observation cell the prison restricts his possessions, lest they be used to commit suicide or inflict non-lethal harm. Conner has filed suits about these limitations. This is one of them. *Conner v. Hoem*, No. 18-3075 (7th Cir. Apr. 23, 2019) (nonprecedential decision), is another....Because this suit is frivolous, the claim in the district court counts as one "strike" for the purpose of 28 U.S.C. §1915(g), and this appeal is a second. AFFIRMED

USA v. Christopher Sours No. 19-2294

Submitted February 10, 2020 — Decided February 11, 2020

Case Type: Criminal

Central District of Illinois. No. 12-cr-40083-001 — **Sara Darrow**, *Chief Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

After serving a 51-month term of imprisonment for wire fraud, 18 U.S.C. § 1343, Christopher Sours began serving a three-year term of supervised release. A little over a year later, the district court revoked Sours's supervision because he admitted to using methamphetamine. The judge sentenced him to a year and a day in prison, to be followed by a nearly two-year term of supervised release. Sours completed the new prison term, but while on supervised release, he once again admitted to drug use. (He had used cocaine on three different occasions.) The judge again revoked his supervised release, this time sentencing him to 18 months in prison without further supervision. Sours filed a notice of appeal, but his counsel asserts that the appeal is frivolous and moves to withdraw. Sours has not responded to counsel's motion. See 7TH CIR. R. 51(b). Because Sours does not have an unqualified constitutional right to counsel on an appeal of a revocation order, see *Gagnon v. Scarpelli*, 411 U.S. 778, 790–91 (1973), the safeguards of

Anders v. California, 386 U.S. 738 (1967), need not govern our review. Nonetheless, our practice is to follow them. See United States v. Brown, 823 F.3d 392, 394 (7th Cir. 2016). Because counsel's analysis appears thorough, we limit our review to the subjects he addresses. See United States v. Bey, 748 F.3d 774, 776 (7th Cir. 2014).... We GRANT counsel's motion to withdraw and DISMISS the appeal.

USA v. Javier Gonzalez-Loza No. 19-2050

Submitted February 10, 2020 — Decided February 11, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:18-CR-00358(1) — **Charles R. Norgle**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Javier Gonzalez-Loza pleaded guilty to knowingly and intentionally distributing 400 grams or more of a mixture or substance containing a detectable amount of fentanyl in violation of 21 U.S.C. § 841(a)(1). The district court sentenced Gonzalez-Loza to ten years' imprisonment, the statutory minimum sentence for his conviction. 21 U.S.C. § 841(b)(1)(A)(vi). Gonzalez-Loza appeals, but his counsel asserts that the appeal is frivolous and moves to withdraw. See *Anders v. California*, 386 U.S. 738, 744 (1967). Gonzalez-Loza did not respond to counsel's motion. See CIR R. 51(b). Counsel's brief is barely adequate—its analysis is comprised of three short paragraphs and outlines only one possible appealable issue. Yet, because our review of the record reveals no arguable issues with Gonzalez-Loza's plea or sentence, we agree with counsel's conclusion that an appeal would be futile. See *United States v. Hamzat*, 217 F.3d 494, 501 (7th Cir. 2000).... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

Casa Stuckey v. Bank of America, N.A. No. 19-1959

Submitted February 10, 2020 — Decided February 11, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-4004 — **John Z. Lee**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

After Casa Stuckey defaulted on his mortgage loan in 2010, Bank of America brought a foreclosure action against him in Illinois state court. The state court entered a judgment of foreclosure and sale against Stuckey in 2017 and approved a sheriff's sale in 2018 through which Bank of America bought the property. Stuckey responded by suing the bank in federal district court weeks later. In his complaint he alleged that the bank "cannot own property," so the district court had to "annul" the state court's order granting it ownership and give Stuckey "full possession." The district judge concluded that Stuckey was impermissibly seeking federal-court review of a state-court decision. The judge therefore dismissed the case for lack of subject-matter jurisdiction under the Rooker-Feldman doctrine....We affirm the dismissal for lack of subject-matter jurisdiction. Although we agree with Bank of America that Stuckey's brief is deficient, what is also clear is that Stuckey, a "state-court loser[]," has asked the federal district court to "review and reject[]" the state court's final judgment—precisely what Rooker-Feldman prohibits. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (citing *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413, 415–16 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482–86 (1983)). Stuckey's complaint challenges the Illinois court's judgment of foreclosure and asks the federal district court to "annul" that ruling. "Claims that directly seek to set aside a state court judgment are de facto appeals that are barred without further analysis." *Jakupovic v. Curran*, 850 F.3d 898, 902 (7th Cir. 2017). AFFIRMED

Marquelle Smith v. Herbert Adams No. 19-1816

Submitted February 10, 2020 — Decided February 11, 2020

Case Type: Prisoner

Southern District of Indiana, Evansville Division. No. 3:18-cv-00019-SEB-MPB — **Sarah Evans Barker**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

After he was arrested during a chaotic nighttime encounter, Marquelle Smith sued three officers, Herbert Adams, Blake Hollins, and J.T. VanCleave, from the Evansville Police Department in Indiana. He alleged that they violated his Fourth Amendment rights when they shot at his car, forcibly removed him from it, and deployed a Taser on him. See 42 U.S.C. § 1983. (His complaint included additional claims and named the police department, county jail, and sheriff as defendants, but those claims and parties were dismissed, and Smith has not appealed those dismissals.) Both sides moved for summary judgment, and the district court granted the defendants' motion. Smith appeals. Because the record properly before us establishes that the use of force was reasonable under the circumstances, we affirm.

USA v. Theodore Simmons No. 19-1443

Submitted February 10, 2020 — Decided February 11, 2020

Case Type: Criminal

Eastern District of Wisconsin. No. 17-CR-137 — **Lynn Adelman**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Theodore Simmons pleaded guilty to five counts of Hobbs Act robbery, 18 U.S.C. § 1951(a), and one count of brandishing a firearm to further a crime of violence, 18 U.S.C. § 924(c). In exchange, the government dismissed one Hobbs Act conspiracy count and four additional § 924(c) counts. Had Simmons been convicted of all five § 924(c) counts, he would have faced a mandatory minimum of 132 years in prison. His plea to only one § 924(c) count lowered the mandatory minimum sentence to 7 years. Simmons later moved to withdraw his guilty plea, arguing that he suffered from mental health issues and that his attorney coerced him into pleading guilty. The district judge denied the motion and later imposed a below-guidelines sentence of 160 months in prison: 76 months for the Hobbs Act robberies followed by the mandatory 84 months for the § 924(c) conviction. The judge also imposed three years of supervised release and ordered that Simmons pay \$3,112 in restitution. Simmons appeals, but appointed counsel asserts that the appeal is frivolous and moves to withdraw under *Anders v. California*, 386 U.S. 738 (1967). Simmons opposes counsel's motion. See CIR. R. 51(b). Counsel's brief explains the nature of the case and addresses potential issues that an appeal of this kind might involve. Because the analysis appears thorough, we limit our review to the subjects that counsel discusses and those in Simmons's response. *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014). We GRANT counsel's motion to withdraw and DISMISS the appeal.

Kevin Grady, Sr. v. Kari Kinder No. 19-1442

Submitted February 10, 2020 — Decided February 11, 2020

Case Type: Prisoner

Southern District of Illinois. No. 18-cv-2159-JPG — **J. Phil Gilbert**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Kevin Grady, a federal inmate, sued prison staff for causing him to lose his job when they would not allow him to sign his inmate financial plan with the caveat that he did so "under duress." He now appeals the dismissal of his suit. Because the district court correctly determined that Grady did not plead any cognizable federal claim, we affirm the judgment.

USA v. Roy Collins No. 19-1176

Argued January 9, 2020 — Decided February 11, 2020

Case Type: Criminal

Central District of Illinois. No. 16-20059 — **James E. Shadid**, *Judge*.

Before WOOD, *Chief Judge*, and EASTERBROOK and BARRETT, *Circuit Judges*.

WOOD, *Chief Judge*. From 2011 through 2016, Roy Collins was the executive director of the Kankakee Valley Park District ("the Park District"), which is a municipal entity that serves residents of Aroma Park and Kankakee Townships, Illinois. The Park District, which is not tax-exempt, works with the Kankakee

Valley Park Foundation (“the Foundation”), which does have tax-exempt status and raises funds for Park District programs. Collins served as treasurer for the Foundation. He proved to be a bad choice for both posts: eventually it came to light that he had been lining his own pockets with the Park District and Foundation’s money. Federal prosecution for mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343 followed. Collins pleaded guilty to both counts and was sentenced to concurrent terms of 42 months’ imprisonment, two-year terms of supervised release, and overall restitution of \$194,383.51. On appeal he has raised several challenges to that sentence, but we are satisfied that there is no reversible error and thus affirm the district court’s judgment.

Frederick Harris v. Nicholas Molinero No. 18-3660

Submitted February 10, 2020 — Decided February 11, 2020

Case Type: Prisoner

Central District of Illinois. No. 16-cv-1322-MMM — **Michael M. Mihm**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

The day after Frederick Harris reported that a fellow prisoner threatened to “blast” him, that prisoner threw feces in Harris’s face, and Harris sustained an eye injury requiring medical treatment. Harris has sued four defendants for violating the Eighth Amendment: two officials for recklessly ignoring his warning about the attack, and two nurses for deliberately disregarding his need for a doctor. See 42 U.S.C. § 1983. The district court granted summary judgment for the defendants. Because a jury could find that one defendant culpably ignored a serious risk of harm to Harris, we vacate the judgment as to him and remand for trial. We affirm in all other respects.

Whirlpool Corporation v. Wells Fargo Bank, N.A. No. 18-3363

Argued September 5, 2019 — Decided February 11, 2020

Case Type: Bankruptcy from District Court

Southern District of Indiana, Indianapolis Division. No. 1:17-cv-4662-WTL-TAB — **William T. Lawrence**, *Judge*.

Before SYKES, HAMILTON, and SCUDDER, *Circuit Judges*.

SYKES, *Circuit Judge*. This is an appeal from an adversary proceeding in a Chapter 11 bankruptcy and concerns a trade creditor’s right to reclaim goods it sold to the debtor on the eve of bankruptcy. The question is whether the seller’s reclamation claim is superior to the claims of secured lenders—more specifically, the lenders that extended debtor-in possession financing in exchange for a priming, first-priority floating lien on existing and after-acquired inventory. The debtor is appliance retailer hhgregg, Inc. Whirlpool Corporation, a longtime supplier, delivered appliances to hhgregg during the period just before the bankruptcy filing. Wells Fargo Bank, as administrative agent for several lenders, extended operating financing to hhgregg in the years leading up to the bankruptcy. Under the prepetition credit agreement, Wells Fargo’s advances were secured by a first-priority floating lien on nearly all of hhgregg’s assets, including existing and after-acquired inventory and its proceeds....When Whirlpool made its reclamation demand on March 10, the reclaimed goods were subject to Wells Fargo’s prepetition and DIP financing liens. While the prepetition lien was later lifted, the reclaimed goods remained subject to Wells Fargo’s DIP financing lien. The bankruptcy judge correctly subordinated Whirlpool’s reclamation claim to the DIP financing lien. AFFIRMED

USA v. Randy Williams No. 18-3318

Argued December 6, 2019 — Decided February 11, 2020

Case Type: Criminal

Central District of Illinois. No. 2:17-cr-20049 — **Sara Darrow**, *Chief Judge*.

Before ROVNER, BRENNAN, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. On July 28, 2016, two men entered a Sprint store with a gun, threatened and zip-tied all witnesses, grabbed some merchandise, and fled the store in two vehicles. Randy Williams was one of the getaway drivers. He was caught and indicted for obstruction of commerce by robbery under 18 U.S.C. § 1951. Williams pleaded not guilty. Judge Colin S. Bruce presided over his jury trial, and, on June

14, 2018, the jury found Williams guilty. A few months later, it became public that Judge Bruce had engaged in ex parte communications with members of the United States Attorney's Office for the Central District of Illinois (the "Office"). As a result, all criminal cases assigned to Judge Bruce were reassigned to other judges. Williams's case was reassigned to now Chief Judge Darrow who presided over his sentencing hearing and sentenced him to 180 months' imprisonment....Because there was sufficient evidence regarding the use of a firearm during the crime, we also hold that the district court did not err in applying a firearm enhancement. We affirm his conviction and sentence. We also grant Williams's unopposed motion to supplement the record on appeal.

Bria Health Services, LLC v. Theresa A. Eagleson No. 18-3076

Argued September 19, 2019 — Decided February 11, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:17 - cv - 8920 — **Charles R. Norgle**, *Judge*.
Before SYKES, HAMILTON, and BRENNAN, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Plaintiffs are consultants who provide services to nursing homes and long-term care facilities. They say they are bringing this suit on behalf of seriously ill nursing home residents receiving care under Medicaid. The residents, however, are not parties to this suit, and it seems unlikely that they would benefit at all if plaintiffs win. By all appearances, plaintiffs have brought this suit in an effort to push the State of Illinois and its Medicaid contractors to pay outstanding bills owed to the consultants' clients. Third parties can bring claims on behalf of others under some circumstances. Guardians, next friends, and associations, for example, can have representative standing. This case does not involve such established standing doctrines. Instead, plaintiffs rely on a Medicaid regulation. As we read that regulation, however, it does not permit authorized representatives to bring civil lawsuits on behalf of Medicaid beneficiaries. We affirm the district court's dismissal for lack of standing and thus lack of subject matter jurisdiction.

Elena Hernandez v. Marque Medicos Fullerton, LLC No. 18-1789

February 11, 2020

Case Type: Bankruptcy from District Court

Northern District of Illinois, Eastern Division. No. 17 CV 3230 — **Jorge L. Alonso**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; DIANE S. SYKES, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

This bankruptcy appeal raises a single question of state law. Elena Hernandez had only one sizable asset when she filed her Chapter 7 petition: a pending workers' compensation claim, which she valued at \$31,000. She listed the claim as exempt under section 21 of the Illinois Workers' Compensation Act, 820 ILL. COMP. STAT. 305/21 (applicable via 11 U.S.C. § 522(b)), and she settled it two days after filing for bankruptcy. In re Hernandez, 918 F.3d 563, 565 (7th Cir. 2019). Hernandez's creditors include certain healthcare providers who treated her workplace injuries; they objected to the claimed exemption. The bankruptcy judge denied the exemption, and the district judge affirmed....In re Hernandez, No. 124661, 2020 WL 398783, at *6 (Ill. Jan. 24, 2020). That authoritative holding of the state supreme court is dispositive. The proceeds of Hernandez's workers' compensation settlement are exempt from the claims of the healthcare providers who treated her workplace injuries. The contrary rulings of the bankruptcy and district courts rest on a flawed interpretation of state law. Accordingly, the judgment must be and hereby is REVERSED.

Terry Jones v. USA No. 17-1173

Submitted January 30, 2020 — Decided February 11, 2020

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 16 C 6396 — **Milton I. Shadur**, *Judge*.

Before DANIEL A. MANION, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Terry Jones moved under 28 U.S.C. § 2255 to vacate his sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e), arguing that his previous Illinois robbery convictions do not qualify as violent felonies under the Act. The district court denied the motion. Because Illinois robbery qualifies as a violent felony under ACCA, see *Klikno v. United States*, 928 F.3d 539, 545–46 (7th Cir. 2019), we affirm.

DeWayne Perry v. Richard Brown No. 19-1683

Argued January 29, 2020 — Decided February 12, 2020

Case Type: Prisoner

Southern District of Indiana, Terre Haute Division. No. 2:18-cv-00271-WTL-DLP — **William T. Lawrence**, *Judge*.

Before BAUER, EASTERBROOK, and BRENNAN, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. DeWayne Perry, serving a long sentence for murder, suffers from aphasia, which impairs his ability to speak, write, and understand words. A stroke in 2009 caused Perry's aphasia, a condition that ranges from moderate limitations to complete disability. How limiting Perry's aphasia is today—or was in 2016 and 2017—is a central but unresolved issue in this litigation. Perry pursued both direct and collateral review in Indiana's courts. A lawyer was appointed to represent him on the collateral attack, but as far as we can see the lawyer did nothing for him and eventually bailed out, leaving Perry unrepresented. Assisted in this appeal by volunteers from an esteemed law firm, Perry tells us that, after his former lawyer quit and the state judge denied his request for more time, he tried to dismiss his collateral attack without prejudice so that he could obtain assistance and mount a better challenge. Five months after dismissing the state proceeding, he refiled it, adding new legal theories. But the state judge dismissed the renewed application, ruling that the original dismissal had been with prejudice. Perry then filed in federal court a petition under 28 U.S.C. §2254, only to have it summarily dismissed....The judgment is vacated, and the case is remanded for proceedings consistent with this opinion.

USA v. Grayson Enterprises, Inc. No. 19-1367

Argued September 26, 2019 — Decided February 12, 2020

Case Type: Criminal

Central District of Illinois. No. 2:16-cr-20044-SEM-TSH-2 — **Sue E. Myerscough**, *Judge*.

Before BAUER, MANION, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Grayson Enterprises, Inc., is a roofing company that does business under the trade name Gire Roofing. A grand jury indicted Grayson alongside its business's namesake, Edwin Gire, on charges of visa fraud, harboring unauthorized aliens, and employing the same aliens. On paper, though, Gire had no official relation to Grayson as a corporate entity—he was not a stockholder, officer, or even an employee of the corporation. He managed the roofing (Grayson's sole business), as he had under the Gire Roofing name for more than twenty years. The corporate papers instead identified Grayson's president and sole stockholder as Kimberly Young. Young—Gire's girlfriend—incorporated and acted as president of the "new" company Grayson, after Gire's previous roofing company went bankrupt. Gire, his retained counsel, and the government all nevertheless represented to the district court that Gire was Grayson's president. The district court, thus, permitted Gire to plead guilty on his and Grayson's behalf to three counts of employing unauthorized aliens and to waive his and Grayson's rights to a jury trial on the remaining charges. Joint counsel also represented both defendants during a bench trial that resulted in their convictions on all charges and a finding that Grayson's headquarters was forfeitable to the government because Gire had used the building to harbor aliens....Although Grayson identifies numerous potential errors in the proceedings leading to its conviction, it has not convinced us that any is cause for reversal. The judgment of the district court is, therefore, AFFIRMED.

Maman Bio v. Inventiv Health Clinical, LLC No. 19-1811

Argued January 29, 2020 — Decided February 13, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:16-cv-02546-TWP-MJD — **Tanya Walton Pratt**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Maman Bio managed a team of statistical programmers for inVentiv Health Clinical, LLC. He was fired and his team dissolved after one of the company's clients began insourcing—that is, performing itself—the programming work of Bio and his team. In response Bio, who is black and from Niger, sued inVentiv for race and nationality discrimination under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981. The district court granted summary judgment to inVentiv, concluding it had a non-pretextual reason for firing Bio that he failed to rebut. We affirm.

Brandi Lutes v. United Trailers, Inc. No. 19-1579

Argued November 13, 2019 — Decided January 27, 2020

Opinion Issued February 13, 2020

Case Type: Civil

Northern District of Indiana, South Bend Division. No. 2:17-CV-00304 RLM — **Robert L. Miller, Jr.**, *Judge*.

Before BAUER, BRENNAN, and SCUDDER, *Circuit Judges*.

PER CURIAM. Buddy Phillips (now deceased) injured his ribs while playing with his grandchildren. Over the next two weeks he called his employer, United Trailers, to report he would miss work. Eventually Phillips stopped calling in and did not appear for work on three consecutive days so United fired him. He sued, alleging United failed to properly notify him of his rights under the Family Medical Leave Act (“FMLA”) and that he was fired in retaliation for attempting to exercise his right to seek leave under that Act. The district court granted summary judgment for United. This appeal presents a complicated fact pattern under the FMLA in which the employee (through unreported absences) and the employer (by failing to inform the employee of requisite information about FMLA leave) may have failed to comply with the FMLA. We affirm the district court’s judgment as to Phillips’s retaliation claim but vacate the court’s judgment concerning Phillips’s interference claim and remand for further proceedings consistent with this order.

Rick Jacobsen v. CIR No. 18-3371

Argued September 13, 2019 — Decided February 13, 2020

Case Type: Tax

United States Tax Court. No. 25348-15 — **Elizabeth Crewson Paris**, *Judge*.

Before BAUER, ROVNER, and SYKES, *Circuit Judges*.

ROVNER, *Circuit Judge*. Petitioner Rick E. Jacobsen’s former wife Tina M. Lemmens embezzled over \$400,000 from her employer, income that was not reported on the couple’s jointly filed income taxes. As relevant here, after Lemmens was convicted for her embezzlement, the Internal Revenue Service (“IRS”) audited the couple’s joint tax returns for 2010 and 2011. For those years, the IRS proposed total net adjustments attributable to omitted embezzlement income (there were other unrelated proposed adjustments) of over \$300,000, with corresponding deficiencies and accuracy-related penalties of over \$150,000. Jacobsen sought relief under the tax code’s “innocent spouse” provision, 26 U.S.C. § 6015(b), and equitable relief provision, § 6015(f). As relevant here, the Tax Court granted Jacobsen innocent spouse relief for 2010, but denied all relief for 2011. Jacobsen appeals, but we affirm.

USA v. Randy Williams No. 18-3318

February 13, 2020

Case Type: Criminal

Central District of Illinois, District Court No: 2:17-cr-20049-SLD-EIL-1 — **Sara Darrow**, *Judge*.

IT IS ORDERED that the motion is GRANTED. On page three of the opinion in the second full paragraph, the third sentence of the paragraph is CORRECTED to read: In those emails, Judge Bruce criticized one of the prosecutors as being “entirely unexperienced” turning a “slam-dunk” case into a “60-40” for the defendant.

USA v. Jesse J. Ballard No. 19-2103

Argued January 16, 2020 — Decided February 14, 2020

Case Type: Criminal

Southern District of Illinois. No. 17-cr-40079 — **J. Phil Gilbert**, *Judge*.

Before FLAUM, MANION, and KANNE, *Circuit Judges*.

MANION, *Circuit Judge*. Jesse Ballard has an extraordinarily long history of criminal conduct, which the sentencing judge described as “probably one of the worst criminal histories [he’d] seen in 30 years” of experience. From 1985 until 2017, Ballard accrued over 30 convictions for crimes such as attempted residential burglary, kidnapping, battery, aggravated assault (amended from rape), possession of a firearm as a felon, and multiple convictions for driving with a suspended or revoked driver’s license. Ballard also accrued a multitude of parole violations and committed several infractions while in prison....Because the district court did not provide an adequate explanation for the extreme upward departure from Ballard’s recommended Guidelines range, we hold that it committed procedural error. Accordingly, we VACATE the sentence and REMAND for resentencing.

Antrim Pharmaceuticals LLC v. Bio-Pharm, Inc. No. 18-3434

Argued September 16, 2019 — Decided February 14, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 16-cv-00784 — **Matthew F. Kennelly**, *Judge*.

Before BAUER, BRENNAN, and ST. EVE, *Circuit Judges*.

BRENNAN, *Circuit Judge*. Antrim Pharmaceuticals LLC and Bio-Pharm, Inc. arranged to manufacture and sell a generic anti-depressant. When their plan fell apart, litigation followed. Antrim sued Bio-Pharm for breach of contract, and Bio-Pharm counterclaimed based on promissory estoppel or, in the alternative, breach of contract. Following a five-day trial, a jury found for Bio-Pharm on Antrim’s breach of contract claim and for Antrim on Bio-Pharm’s counterclaim. Neither party was awarded damages. Antrim appealed. Antrim challenges the district court’s jury instructions, evidentiary rulings, and decision to allow Bio-Pharm to request lost profits as a remedy on its counterclaim. Bio-Pharm argues Antrim waived these arguments on appeal because Antrim agreed to a general verdict form and did not file a post-trial motion under Federal Rule of Civil Procedure 50(b). We conclude that Bio-Pharm’s waiver argument has no merit but affirm because the district court committed no reversible error.

Juan Velez, Juan DeJesus & Joshua Vidal v. USA Nos. 17-1034, 17-1035 & 17-1426

Argued January 29, 2020 — Decided February 14, 2020

Case Type: Prisoner

Northern District of Illinois, Eastern Division. Nos. 16-C-6441, 16-C-6442 & 16-C-5104 — **Amy J. St. Eve**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

In 2010 Joshua Vidal, Juan Velez, and Juan DeJesus tried to rob cocaine from what they thought was a stash house. They were charged with conspiring and attempting to possess with intent to distribute more than five kilograms of cocaine, see 18 U.S.C. § 2; 21 U.S.C. §§ 841(a)(1), 846; attempting Hobbs Act robbery, see 18 U.S.C. §§ 2, 1951(a); and one count per defendant of possessing a firearm in furtherance of these crimes, see 18 U.S.C. § 924(c)(1)(A). Vidal pleaded guilty to all the charges, while Velez and DeJesus pleaded guilty only to the attempted robbery and the firearm offense....We therefore AFFIRM the district court’s judgments with respect to Velez and DeJesus; GRANT counsel’s motion to vacate Vidal’s certificate of appealability; and DENY Vidal’s motion to appoint new counsel because he has no non - frivolous argument to raise.