Opinions for the week of February 17 – February 21, 2020

Thomas Juza v. Wells Fargo Bank, N.A. No. 19-2264
Argued February 13, 2020 — Decided February 18, 2020
Case Type: Civil
Eastern District of Wisconsin. No. 1:19-cv-36 — **William C. Griesbach**, *Judge*.
Before JOEL M. FLAUM, *Circuit Judge;* DANIEL A. MANION, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge.*

ORDER
Thomas Juza alleges two breach of contract claims and two tort claims against the defendant, Wells Fargo Bank, N.A. (the "Trust"). The Trust owned the interests in a loan given to Juza Investments II, an entity owned by Thomas Juza. In 2008, Thomas Juza attempted to transfer his interests in Juza II to a third party, but the Trust delayed its approval and the transfer fell through. Thomas Juza alleges that by withholding its approval, the Trust breached its contractual obligations under the Mortgage Agreement—an agreement between the Trust and Juza II. He also alleges that the delay constituted tortious interference with contract and tortious interference with prospective economic advantage. The district court dismissed all four of Thomas Juza's claims. As for his breach of contract claims, the district court dismissed one as superfluous and the other for lack of standing since Thomas Juza was not a party to the Mortgage Agreement and the Agreement barred him from bringing a claim as a third-party beneficiary. The district court dismissed both of Thomas Juza's tort claims as untimely. We AFFIRM the judgment of the district court for the reasons stated in the district court's order of June 5, 2019, which is attached.

USA v. Shawn Lee No. 19-1300
Argued September 26, 2019 — Decided February 18, 2020
Case Type: Criminal
Central District of Illinois. No. 3:18-cr-30011 — **Sue E. Myerscough**, *Judge*.
Before BAUER, MANION, and ST. EVE, *Circuit Judges*.
ST. EVE, *Circuit Judge*, dissenting in part and concurring in part.

MANION, *Circuit Judge*. Shawn Lee sold a staggering amount of ice methamphetamine in Central Illinois from early 2015 until his arrest in January 2018. He now appeals his sentence after pleading guilty to one count of possessing 50 grams or more of methamphetamine with intent to distribute and one count of possessing firearms in furtherance of a drug-trafficking crime. Lee contends he should not have received two extra criminal history points under U.S.S.G. § 4A1.1(d) for dealing methamphetamine while on supervision for a drunk driving offense. He also challenges the district judge's imposition of a fine and a term of supervised release that will prohibit him from interacting with known felons unless he receives the probation officer's permission. Because this supervision term violates the rule against delegating Article III power, we vacate the condition and remand for reassessment. We affirm on all other grounds.

USA v. Marvin Cates No. 19-1042
Argued December 3, 2019 — Decided February 18, 2020
Case Type: Criminal
Northern District of Indiana, South Bend Division. No. 3:18-cr-00072-RLM-MGG-1 — **Robert L. Miller, Jr.**, *Judge*.
Before WOOD, *Chief Judge*, and HAMILTON and SCUDDER, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Marvin Cates pleaded guilty to possessing a firearm as a person with a prior felony conviction in violation of 18 U.S.C. § 922(g)(1). After the court accepted his guilty plea, Cates sought to withdraw it. The district judge denied the motion to withdraw the plea and sentenced Cates. Cates has appealed, claiming ineffective assistance of counsel. He says that he made a timely request to withdraw his guilty plea and that his trial counsel was deficient in failing to move to withdraw it. We questioned whether Cates truly wishes us to decide his ineffective-assistance claim on this record,

including a directive to his appellate counsel to review the question with him after oral argument. He has insisted that he wants to have his claim decided on the existing record. Because the record contains insufficient evidence to support Cates's ineffective-assistance claim, we affirm.

USA v. David Bridgewater No. 19-2522
Argued January 16, 2020 — Decided February 19, 2020
Case Type: Criminal
Southern District of Illinois. No. 19-cr-40012 — **Staci M. Yandle**, *Judge*.
Before FLAUM, MANION, and KANNE, *Circuit Judges*.

FLAUM, *Circuit Judge*. David Bridgewater pleaded guilty to one count of soliciting an obscene visual depiction of a minor in violation of 18 U.S.C. § 2252A(a)(3)(B)(i). Federal law re- quired a mandatory-minimum Guidelines sentence of 60 months in prison. The district court deviated from the Guidelines to 78 months to account for a charge of attempted enticement of a minor that the government dismissed in exchange for his guilty plea. That conduct, the court found, aggravated the nature and circumstances of the offense of conviction. The court therefore sentenced above the Guidelines range to holistically address Bridgewater and his crime in a way the mandatory-minimum Guidelines range did not. Bridgewater now appeals his sentence, principally arguing that it is substantively unreasonable because basing it—even in part—on dismissed conduct creates systemwide disparity. We affirm.

Kenyatta Bridges v. Thomas Dart No. 19-1791
Argued January 23, 2020 — Decided February 19, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:16-cv-04635 — **Manish S. Shah**, *Judge.*
Before ROVNER, HAMILTON, and SCUDDER, *Circuit Judges*.

ROVNER, *Circuit Judge.* Kenyatta Bridges was a pretrial detainee at the Cook County Department of Corrections ("Department") when he fell out of the upper bunk to which he had been assigned and injured himself. He sued Thomas J. Dart, the Sheriff of Cook County, Illinois ("Sheriff") in his official capacity, and Cook County, Illinois ("County"), asserting that the injuries he sustained were caused by the defendants' practice of ignoring medically necessary lower bunk prescriptions. The district court granted summary judgment in favor of the defendants and we affirm.

Ali Gadelhak v. AT&T Services, Incorporated No. 19-1738
Argued September 27, 2019 — Decided February 19, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:17-cv-1559 — **Edmond E. Chang**, *Judge*.
Before WOOD, *Chief Judge*, and KANNE and BARRETT, *Circuit Judges*.

BARRETT, *Circuit Judge*. The wording of the provision that we interpret today is enough to make a grammarian throw down her pen. The Telephone Consumer Protection Act bars certain uses of an "automatic telephone dialing system," which it defines as equipment with the capacity "to store or produce telephone numbers to be called, using a random or sequential number generator," as well as the capacity to dial those numbers. We must decide an issue that has split the circuits: what the phrase "using a random or sequential number generator" modifies. We'll save the intense grammatical parsing for the body of the opinion—here, we'll just give the punchline. We hold that "using a random or sequential number generator" modifies both "store" and "produce." The system at issue in this case, AT&T's "Customer Rules Feedback Tool," neither stores nor produces numbers using a random or sequential number generator; instead, it exclusively dials numbers stored in a customer database. Thus, it is not an "automatic telephone dialing system" as defined by the Act—which means that AT&T did not violate the Act when it sent unwanted automated text messages to Ali Gadelhak… The district court's judgment is therefore AFFIRMED.

USA v. Salvatore Picardi No. 19-1043
Argued September 4, 2019 — Decided February 19, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 1:16-cr-00431-1 — **Thomas M. Durkin**, *Judge.*
Before ROVNER, SCUDDER, and ST. EVE, *Circuit Judges*.

ROVNER, *Circuit Judge.* A jury found Salvatore Picardi guilty of one count of embezzlement by an officer or employee of the United States, in violation of 18 U.S.C. § 654. The district court sentenced Picardi to a term of eight months' imprisonment and a fine of $100,000. On appeal, Picardi objects to the amount of the fine and to the adequacy of the district court's explanation for imposing an above-Guidelines fine. Because Picardi waived any argument regarding the fine, we dismiss the appeal.

Kendrick Butler v. Adam Deal No. 18-2816
Submitted January 7, 2020 — Decided February 19, 2020
Case Type: Prisoner
Central District of Illinois. No. 1:15-cv-1102-JBM — **Joe Billy McDade**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* ILANA DIAMOND ROVNER, *Circuit Judge;* DAVID F. HAMILTON, *Circuit Judge.*
HAMILTON, Circuit Judge, dissenting.

ORDER
This appeal raises the question whether the parties to a case reached an enforceable settlement agreement. Kendrick Butler, a prisoner in Illinois's Pontiac Correctional Center, had filed a claim against correctional officer Adam Deal for using excessive force while handcuffing him. After the parties had engaged in some exchanges about possible settlement of the dispute, the district court held an evidentiary hearing and determined that they had done so. It then entered an order enforcing the agreement it understood them to have reached. We conclude, however, that the court acted under a misapprehension of what terms could be on the table, and that it acted prematurely. We therefore vacate its judgment and remand for further proceedings.

Michael Needle, P.C. v. Cozen O'Connor No. 19-2241
Argued January 14, 2020 — Decided February 20, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 15-cv-00259 — **Rebecca R. Pallmeyer**, *Chief Judge*.
Before WOOD, *Chief Judge*, and ROVNER and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. After Michael R. Needle P.C. ("Needle P.C.") went months without counsel in a fee dispute action and was on the verge of a default judgment, three partners from the law firm Cozen O'Connor stepped in to represent Needle P.C. Their representation successfully staved off the pending default motion but was otherwise short-lived. Less than three months after appearing as counsel, Cozen O'Connor understandably withdrew due to irreconcilable differences and a total breakdown of the attorney–client relationship. Cozen O'Connor sought to be compensated for its work, though, under a *quantum meruit* theory and perfected an attorney's lien. The district court then granted Cozen O'Connor's petition to adjudicate and enforce the lien. Because Cozen O'Connor is entitled to recover in *quantum meruit* and the district court properly concluded that the petitioned fees were reasonable, we affirm.

Bryan Kuykendoll v. Andrew M. Saul No. 19-2030
Argued January 29, 2020 — Decided February 20, 2020
Case Type: Civil
Northern District of Indiana, South Bend Division. No. 3:17-CV-766 RLM-MGG — **Robert L. Miller, Jr**., *Judge*.
Before WILLIAM J. BAUER, *Circuit Judge;* FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge.*

ORDER
Bryan Kuykendoll, a 53-year-old man with a host of physical and mental health conditions, challenges the denial of his applications for disability insurance benefits and supplemental security income. He argues that, when determining his capacity to perform work-related tasks, the administrative law judge insufficiently accounted for his "moderate" limitations in concentration, persistence, or pace, as well as his intolerance for respiratory irritants and use of a cane. He also contends that the ALJ improperly discounted a treating psychiatrist's opinion and inappropriately inferred from his limited daily activities that he could work. Because substantial evidence supports the ALJ's decision, we affirm.

Merle L. Royce v. Michael R. Needle Nos. 18-2850, 18-2851, 18-3725, & 19-1054
Argued January 14, 2020 — Decided February 20, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 15-cv-00259 — **Rebecca R. Pallmeyer**, *Chief Judge*.
Before WOOD, *Chief Judge*, and ROVNER and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. This dispute over attorney's fees has a long, tortured history. Not because it is unduly complex or involves novel legal issues, but because one of the attorneys— Michael R. Needle— protracted it every step of the way. He routinely and unapologetically tested the district court's patience, disregarded court orders, and caused unnecessary delays. As a result, the district court sanctioned Needle multiple times for "obstructionist and vexatious" tactics. The fee dispute arose only because Needle steadfastly took an objectively frivolous position that he and his co-counsel, Merle L. Royce, were entitled to the lion's share—almost sixty percent—of their clients' settlement in an underlying suit as attorney's fees. Even Royce rejected Needle's position because the plain language of the contingent fee agreement provided that attorney's fees shall be one-third of the settlement. The district court found the same, and then decided a sub-dispute over the division of the aggregate attorney's fee between Royce and Needle under a separate co-counsel agreement. The court awarded Needle sixty percent and Royce forty percent of the aggregate attorney's fee. Needle appeals both decisions relating to the attorney's fee, the sanctions assessed against him, and a host of other perceived errors. We affirm the judgment in all respects because the district court's rulings were correct, the sanctions were appropriate, and Needle's other arguments are baseless.

Mary Stelter v. Wisconsin Physicians Service No. 18-3689
Argued September 13, 2019 — Decided February 20, 2020
Case Type: Civil
Western District of Wisconsin. No. 3:17-cv-00463-jdp — **James D. Peterson**, *Chief Judge.*
Before BAUER, ROVNER, and SYKES, *Circuit Judges.*

BAUER, *Circuit Judge.* This appeal is brought by Mary Lou Stelter against her former employer, Wisconsin Physicians Service Insurance Corporation ("WPS"), for discrimination and retaliation in violation of the Americans with Disabilities Act of 1990 ("ADA"). Alleging she was disabled under the ADA with back pain that was aggravated by an injury at work, Stelter contends WPS discriminated and retaliated against her, failed to accommodate her disability, and ultimately terminated her based on pretext. The record shows Stelter was terminated for a pattern of job absenteeism and deficiency. The district court granted summary judgment in favor of WPS. We affirm.

Merle Royce v. Michael Needle Nos. 18-2850, 18-2851, 18-3725, & 19-1054
Argued January 14, 2020 — Decided February 20, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 15-cv-00259 — **Rebecca R. Pallmeyer**, *Chief Judge*.
Before WOOD, *Chief Judge*, and ROVNER and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. This dispute over attorney's fees has a long, tortured history. Not because it is unduly complex or involves novel legal issues, but because one of the attorneys— Michael R. Needle—

protracted it every step of the way. He routinely and unapologetically tested the district court's patience, disregarded court orders, and caused unnecessary delays. As a result, the district court sanctioned Needle multiple times for "obstructionist and vexatious" tactics. The fee dispute arose only because Needle steadfastly took an objectively frivolous position that he and his co-counsel, Merle L. Royce, were entitled to the lion's share—almost sixty percent—of their clients' settlement in an underlying suit as attorney's fees. Even Royce rejected Needle's position because the plain language of the contingent fee agreement provided that attorney's fees shall be one-third of the settlement. The district court found the same, and then decided a sub-dispute over the division of the aggregate attorney's fee between Royce and Needle under a separate co-counsel agreement. The court awarded Needle sixty percent and Royce forty percent of the aggregate attorney's fee. Needle appeals both decisions relating to the attorney's fee, the sanctions assessed against him, and a host of other perceived errors. We affirm the judgment in all respects because the district court's rulings were correct, the sanctions were appropriate, and Needle's other arguments are baseless.

Chongnengwt Vang v. Andrew M. Saul No. 19-1860
Argued January 30, 2020 — Decided February 21, 2020
Case Type: Civil
Eastern District of Wisconsin. No. 18-C-277 — **Lynn Adelman**, *Judge*.
Before DANIEL A. MANION, *Circuit Judge;* MICHAEL S. KANNE, *Circuit Judge;* DIANE S. SYKES, *Circuit Judge.*

ORDER
Chongnengwt Vang applied for Disability Insurance Benefits based on a variety of health problems, including diabetes, hepatitis, and carpal tunnel syndrome. An administrative law judge denied his application on the ground that, despite these impairments, Vang could still perform a range of light work. On appeal, Vang argues that the ALJ should have given his doctor's opinion controlling weight, that the ALJ's residual functional capacity assessment was not supported by substantial evidence, and that the ALJ failed to consider his excellent work history when evaluating his subjective complaints. None of these challenges is persuasive, so we uphold the ALJ's ruling… AFFIRMED

Jimmie Jordan v. Christopher Sherrod No. 18-3146
Submitted December 19, 2019 — Decided February 21, 2020
Case Type: Prisoner
Southern District of Illinois. No. 3:15-cv-97-DGW — **Donald G. Wilkerson**, *Magistrate Judge*.
Before JOEL M. FLAUM, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge.*

ORDER
Jimmie Jordan appeals from an adverse judgment entered after a jury's verdict in favor of prison officers and supervisors whom he sued for violating the Eighth Amendment by causing him to suffer broken ribs and contusions. *See* 42 U.S.C. § 1983. He also challenges the district court's denial of his post-judgment motion for a new trial. We affirm the judgment on the verdict because Jordan, who did not raise in the district court a challenge to the verdict, has not shown that upholding the verdict would result in a miscarriage of justice. Also, because Jordan did not file an amended notice of appeal after the district court denied his motion for a new trial, we cannot review his challenge to that post-judgment decision.