

Opinions for the week of November 2 – November 6, 2020

Virgil Lockett v. Andrew Saul No. 20-1564

Submitted November 2, 2020 — Decided November 3, 2020

Case Type: Civil

Southern District of Illinois. No. 19-cv-1183-GCS — **Gilbert C. Sison**, *Magistrate Judge*

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

Virgil Lockett challenges the denial of his application for supplemental security income. He contends that the administrative law judge neglected to consider his limitation in maintaining pace and improperly relied on an altered transcript of a previous hearing. But because the ALJ supported her decision with substantial evidence, and Lockett's claim of evidence tampering is unsubstantiated, we affirm.

USA v. Mario Price No. 20-1488

Submitted November 2, 2020 — Decided November 3, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:18-CR-00722(1) — **Edmond E. Chang**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

While on supervised release for battering a police officer, Mario Price was caught with a loaded handgun. He pleaded guilty to possessing a firearm as a felon. See 18 U.S.C. § 922(g)(1). The district court sentenced him to 48 months in prison minus time already spent in custody. See U.S.S.G. § 5K2.23. Price filed a notice of appeal, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw under *Anders v. California*, 386 U.S. 738 (1967). Price has not responded to counsel's motion. See CIR.R. 51(b). Counsel's brief explains the nature of the case and addresses the potential issues that an appeal of this kind might involve. Because counsel's analysis mostly appears thorough, we focus our review on the issues he discusses. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014)... We therefore GRANT counsel's motion to withdraw and DISMISS the appeal.

USA v. Gary Shields No. 20-1357

Submitted November 2, 2020 — Decided November 3, 2020

Case Type: Criminal

Southern District of Illinois. No. 3:10-CR-30179-SMY-1 — **Staci M. Yandle**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

Gary Shields pleaded guilty to possessing child pornography, 18 U.S.C. § 2252(a)(4)(B), (b)(2), and was sentenced to 120 months' imprisonment followed by a lifetime of supervised release. During his first year of release, Shields violated several conditions of his supervision, including accessing child pornography from the internet. After the government moved to revoke his release, Shields admitted to the violations. The district court revoked his supervised release and sentenced him to 18 months' reimprisonment followed by a lifetime of supervised release. Shields filed a timely notice of appeal and seeks to challenge his sentence. His appointed counsel, however, asserts that all potential appellate arguments are frivolous, moves to withdraw, and asks us to dismiss the appeal. See *Anders v. California*, 386 U.S. 738, 744 (1967). We agree with counsel and therefore grant the motion to withdraw and dismiss the appeal.

Chandra Turner v. City of Champaign No. 19-3446

Argued September 17, 2020 — Decided November 3, 2020

Case Type: Civil

Central District of Illinois. No. 2:17-cv-02261-EIL — **Eric I. Long**, *Magistrate Judge*.

Before KANNE and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Richard Turner died during an encounter with police officers in Champaign, Illinois. The officers were trying to detain him to protect himself and others and to take him to a hospital for evaluation of his mental health. With hindsight we can say that his death might have been avoided. In this suit by Mr. Turner's estate, however, the central question is not whether officers used best police practices but whether they violated his rights under the Fourth Amendment by using excessive force against him. The district court found that undisputed facts, including a coroner's findings that Mr. Turner suffered no physical trauma but died of a cardiac arrhythmia, showed that the officers did not use excessive force. We agree and affirm summary judgment for the defendants.

USA v. Michael Thompkins No. 19-3364

Argued October 6, 2020 — Decided November 3, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:18-CR-00664(1) — **Virginia M. Kendall**, *Judge*.

Before DIANE P. WOOD, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y.

SCUDDER, *Circuit Judge*.

ORDER

About five minutes after a City of Chicago police officer pulled Michael Thompkins over for a traffic violation, the officer asked him to step out of his vehicle. After lengthy and at times heated discussions among Thompkins and a number of Chicago police personnel, Thompkins left his van, and the officer saw that Thompkins had been sitting on a gun. Later indicted for possessing a firearm as a felon in violation of 18 U.S.C. § 922(g)(1), Thompkins moved to suppress the gun, arguing that the order to leave the vehicle was unjustified. After the district court held an evidentiary hearing it denied Thompkins's motion. He then pleaded guilty to the offense but preserved the suppression issue for appeal. Because the order to leave the car was compatible with the Fourth Amendment, and the district court correctly resolved the motion to suppress, we affirm.

USA v. Bryan Osborne No. 19-3139

Submitted November 2, 2020 — Decided November 3, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:17-cr-00073-1 — **Sara L. Ellis**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

Using false identities on Facebook, Bryan Osborne recruited twelve girls and one woman to have sex with him by falsely promising that they were auditioning for pornographic videos. He pleaded guilty to one count of a 25-count indictment: knowingly sex-trafficking a minor by force, fraud, or coercion, in violation of 18 U.S.C. § 1591(a), (b)(1), and (b)(2). After calculating a guidelines range of 292 to 365 months based on Osborne's category I criminal history and offense level of 40, the district court sentenced Osborne to 264 months' imprisonment and 12 years' supervised release. Osborne appeals, but his counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief appears thorough; it explains the nature of the case and the issues that an appeal of this kind might be expected to involve. We therefore limit our review to the subjects that counsel discusses,

and that Osborne raises in his response under Circuit Rule 51(b). *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014)... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

USA v. Scott Bodley No. 20-2144

Submitted November 2, 2020 — Decided November 4, 2020

Case Type: Criminal

Western District of Wisconsin. No. 13-cr-52-bbc — **Barbara B. Crabb**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

In March 2020, while confined in a federal prison, Scott Bodley asked the district court for compassionate release under 18 U.S.C. §3582(c)(1)(A)(i). The judge denied that motion, which Bodley renewed six weeks later. The judge denied that second motion because she believed that Bodley had by then (June 2020) been transferred to a halfway house, rendering his request moot. The record on appeal shows that this did not occur until August 14, when Bodley began his term of supervised release in a halfway house in Wisconsin because he could not find local housing on his own. Bodley contends on appeal that the judge should have granted his original or renewed motion under §3582(c)(1)(A)(i). That motion can no longer be granted because Bodley is not in prison... A federal judge may change the terms of a felon's supervised release at any time. 18 U.S.C. §3583(e)(2). Bodley's failure to cite the appropriate statute does not disable him from seeking judicial aid. Because the district court retains authority to grant Bodley a change in the location of his supervision—or to end the supervised release altogether, as Bodley also requests—we vacate the order dismissing the case as moot and remand for consideration on the merits. VACATED AND REMANDED

Khaled Shabani v. City of Madison No. 20-1452

Submitted November 2, 2020 — Decided November 4, 2020

Case Type: Civil

Western District of Wisconsin. No. 19-cv-65-bbc — **Barbara B. Crabb**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

This is one of several lawsuits that Khaled Shabani brought against the City of Madison and its police officers. He asserts that, on various occasions, officers falsely arrested him, failed to intervene to prevent an officer's use of excessive force against him, and retaliated against him for his prior suits. The district court entered summary judgment for the defendants, concluding that his false-arrest claim was barred by the doctrine of claim preclusion and unsupported by any evidence, and that his remaining claims also lacked evidentiary support. He filed a notice of appeal, but later moved to reopen the case so that he could submit evidence. The district court noted that Shabani neither substantiated his motion nor specified the relief he sought, so it denied the motion. Construing Shabani's appellate brief liberally, *see Anderson v. Hardman*, 241 F.3d 544, 545 (7th Cir. 2001), we discern only one argument: that the district court's allegedly erroneous denial of his motion to reopen prevented him from introducing evidence to defeat summary judgment. But we lack jurisdiction to review this denial because Shabani filed his motion to reopen after filing his notice of appeal. His failure to file a separate notice of appeal from that decision means that we cannot review it... DISMISSED

Mark Girtler v. Bradley Fedie No. 19-2990

Submitted August 26, 2020 — Decided November 4, 2020

Case Type: Prisoner

Western District of Wisconsin. No. 19-cv-358-bbc — **Barbara B. Crabb**, *Judge*.
Before MICHAEL S. KANNE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C.
BARRETT, *Circuit Judge*. **

** Circuit Judge Barrett was a member of the panel when this case was submitted but did not participate in the decision and judgment...

ORDER

While Mark Girtler was in segregation pending the investigation of an attack on him by another inmate, the district court denied his request for a preliminary injunction compelling his transfer to another prison. He filed this interlocutory appeal to contest that ruling. Given Girtler's assertion that officials had separated him from hostile inmates at the time of his request, the deference that courts owe prison officials, and the deference that we owe district courts in ruling on requests for injunctions, the district court reasonably denied the request. We thus affirm.

Brad Sandefur v. Thomas Dart No. 19-2787

Argued September 18, 2020 — Decided November 4, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:17-cv-02048 — **Manish S. Shah**, *Judge*.

Before SYKES, *Chief Judge*, and HAMILTON and ST. EVE, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Plaintiff Brad Sandefur is a corrections officer for the Sheriff of Cook County, Illinois. He suffers from disk desiccation in his spine and osteoarthritis in his knees. Both conditions can cause him intermittent pain for weeks at a time. In 2011, Sandefur applied for and received a handicapped parking placard from the Illinois Secretary of State. His application identified his qualifying disability as osteoarthritis or a "knee condition..." In 2015, however, at age 55, Sandefur applied for and was accepted to the Cook County Sheriff's Police Academy, which offered a path for him to move from corrections officer to a job as a police officer with the Sheriff. On the first day of training, an instructor noticed the handicapped parking placard hanging from the rearview mirror of Sandefur's car. When the instructor asked about the placard, Sandefur said it was there for his wife. When a second officer asked about the placard, Sandefur said that it was his wife's but that he also used it. Wanting to confirm that Sandefur was medically cleared to participate in the Academy's physical training, Academy officials met with Sandefur. He explained that his doctor had approved the placard because of his osteoarthritis but that he was not requesting any accommodations in the Academy course. In the face of Sandefur's inconsistent explanations, the Sheriff's Office eventually opened a formal investigation into his acquisition and use of the placard. Sandefur's explanations did not improve or become more consistent... Based on these findings, the Sheriff's Office dismissed Sandefur from the Academy and returned him to his job as a corrections officer. Sandefur has sued Sheriff Thomas J. Dart and Cook County (together, the "Sheriff's Office") for violating the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12112, and his due process rights under the Fourteenth Amendment. The district court granted summary judgment for the Sheriff's Office, concluding that it had dismissed Sandefur based on its honest belief that he had lied about his disability, not because he had a disability, and that Sandefur had offered no evidence of a due process violation. *Sandefur v. Cook County*, No. 17 cv 2048, 2019 WL 3825509 (N.D. Ill. Aug. 15, 2019). We affirm.

Robert Hammersley v. Robert Wagner and Dustan Peterson Nos. 20-1243 & 20-1244

Submitted November 2, 2020 — Decided November 5, 2020

Case Type: Civil

Eastern District of Wisconsin. Nos. 19-C-1853 & 19-C-1855 — **William C. Griesbach**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

Robert Hammersley has a history of drunk driving: In 2005, he pleaded guilty to operating a vehicle while intoxicated; in 2010, a jury found him guilty of the same; in 2018, he again was arrested and now faces fresh charges. He is currently on bail with electronic monitoring. Last year, he filed two federal lawsuits against people who appear to be the judges, prosecutors, defense attorneys, police officers, and probation officers in his criminal cases. In the first complaint, he listed 41 constitutional violations relating to the arrest and trial that led to his 2010 conviction, though he provided almost no facts about those events. In the second, he asserted that his most recent arrest and his bail conditions were unlawful. He was “not sure if any real actions [could] be instituted” against the defendants he named. Nonetheless, he requested damages and asked the district court to vacate his convictions, end his electronic monitoring, repeal the statutes under which he was charged, and dismiss his pending case. He also submitted 40 discs apparently containing evidence supporting his claims. The district court dismissed both complaints at screening, see 28 U.S.C. § 1915(e)(2), and entered final judgments against him... We cannot decide the appeals on the merits, however. Hammersley’s appellate brief, which appears to recite his grievances with the conduct of his 2010 trial, does not comply with Federal Rule of Appellate Procedure 28(a)(8). Although he is proceeding pro se, he still must make a discernable argument... DISMISSED

Abdul Mohammed v. Erin Anderson Nos. 19-2728, 19-3140, & 20-1174

Submitted November 2, 2020 — Decided November 5, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18 C 8393 — **Gary Feinerman**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

Abdul Mohammed appeals the district court’s dismissal of his lawsuit against the Naperville Community School District and two of its employees. The district court dismissed the case with prejudice pursuant to its inherent sanctioning authority because of Mohammed’s persistent misconduct toward the defendants and their counsel. Mohammed also appeals the denial of his motion to vacate the dismissal under Federal Rule of Civil Procedure 60(b) and the amount of the defendants’ attorneys’ fees the district court ordered him to pay. Because the district court properly exercised its discretion with respect to each of these decisions, we affirm.

Hosea Matthews v. Andrew Saul No. 19-3529

Argued October 6, 2020 — Decided November 5, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18 C 2926 — **Jeffrey I. Cummings**, *Magistrate Judge*.

Before DIANE P. WOOD, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Hosea Matthews, a 25-year-old man suffering from narcolepsy, challenges the denial of his applications for Social Security benefits. He argues that the administrative law judge failed to account for all the functional limitations supported by the record—that he took at least one nap per day, and that he had limits in concentration, persistence, and pace—and improperly discounted his subjective accounts of the severity and limiting effects of his narcolepsy. So, Matthews asserts, the residual functional capacity determined by the ALJ was insufficiently restrictive. While one could read the record to lead to such a result, that is not our task on appeal. Substantial evidence—including the opinions of the agency doctors and the testifying expert—supports the ALJ’s conclusion, so we affirm.

Keli Calderone v. City of Chicago No. 19-2858

Argued September 15, 2020 — Decided November 5, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-07866 — **Thomas M. Durkin**, *Judge*.
Before FLAUM, ROVNER, and WOOD, *Circuit Judges*.

FLAUM, *Circuit Judge*. Caught in a fit of road rage, Keli Calderone shot another driver with her handgun. An Illinois grand jury subsequently indicted her for attempted murder. Calderone's employer—the City of Chicago (“the City”)—administratively charged her for violating its personnel rules. At her later criminal bench trial, Calderone argued self-defense; an Illinois judge agreed and acquitted her. Soon thereafter, the City reinstated Calderone. Calderone then sued the City and her supervisors in federal court, claiming, among other things, that the City fired her in retaliation for her exercise of her Second Amendment rights. The City moved to dismiss the claims, arguing that Calderone's conduct was not within the scope of activity protected by the Second Amendment. The district court granted the motion, reasoning that even if Calderone does have a constitutional right to discharge her firearm in self-defense, qualified immunity shielded her supervisors from suit because caselaw has not clearly established that right. We affirm the district court on the sole ground that Calderone's supervisors are entitled to qualified immunity.

Marlon Watford v. Rob Jeffreys No. 18-3736

Submitted November 2, 2020 — Decided November 5, 2020

Case Type: Prisoner

Southern District of Illinois. No. 15-567-SCW — **Stephen C. Williams**, *Magistrate Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

Marlon Watford, a Muslim prisoner at Menard Correctional Center, believes that prison officials violated his Eighth Amendment rights when they raised photocopying charges at the prison's law library and banned the sale of petroleum jelly and baby powder at the commissary. The ban on petroleum jelly, he adds, also violated his First Amendment rights and the Religious Land Use and Institutionalized Persons Act. 42 U.S.C. § 2000cc (RLUIPA). The district court entered summary judgment against him on all but one claim and later deemed that remaining claim moot. We affirm.

In Re: Felipe Gomez Nos. 19-3015 & 20-1420

Submitted November 2, 2020 — Decided November 6, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 19-D-19 — **Rebecca R. Pallmeyer**, *Chief Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

In this consolidated appeal, attorney Felipe Gomez challenges two disbarment orders from the Executive Committee for the Northern District of Illinois. The Committee twice had ordered Gomez's disbarment based on his pattern of sending harassing and threatening communications to other lawyers. Because the Committee acted well within its discretion to impose such discipline, we affirm.

USA v. Jeremy Hogenkamp No. 20-1376

Submitted November 2, 2020 — Decided November 6, 2020

Case Type: Criminal

Western District of Wisconsin. No. 11-cr-131-bbc — **Barbara B. Crabb**, *Judge*.
Before EASTERBROOK, KANNE, and WOOD, *Circuit Judges*.

PER CURIAM. Jeremy Hogenkamp pleaded guilty to a federal crime and was sentenced to 10 years' imprisonment plus 25 years' supervised release. Fourteen months before the anticipated end of his custodial time (April 2021), he asked the district court to modify the terms of his supervised release. The judge denied this motion, deeming it premature, and invited Hogenkamp to "discuss the terms of his supervised release with his probation officer" later—"[a]t the time that defendant is released"—and "ask the court for a modification of the terms ... at that time." To the extent that the judge believed it appropriate to defer consideration of Hogenkamp's motion until after his release, the decision is mistaken...To the extent that Hogenkamp believes that he is entitled to a judicial decision whenever he requests, he is mistaken...Rather than affirming and forcing Hogenkamp to start over in the district court, we think it appropriate to remand so that the district judge can exercise, without undue delay, the discretion she possesses and make a decision in advance of Hogenkamp's scheduled release. See 28 U.S.C. §2106.

Only the text of the opinions is used. No editorial comment is added. For back issues or to send a comment, please contact [Sonja Simpson](#).