

Opinions for the week of December 2, 2019 to December 6, 2019

One Way Apostolic Church v. Extra Space Storage Inc. No. 18-3512

Submitted November 13, 2019 — Decided December 2, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division No. 16-C-1132 — **Maria G. Valdez**, *Magistrate Judge*.
Before WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

One Way Apostolic Church agreed to rent storage lockers but failed to pay rent for three months and ignored notices about its deficiency. As a result, Extra Space Storage foreclosed its contractual lien by auctioning the contents of the lockers. One Way responded with this suit against Extra Space for breach of contract and conversion. The district court entered judgment for Extra Space. Because Extra Space complied with the contract by giving agreed-upon notice to One Way of the rent deficiency before foreclosing its contractual lien, we affirm.

USA v. Cristian Yupa Yupa No. 19-1946

Argued September 20, 2019 — Decided December 3, 2019

Case Type: Criminal

Northern District of Indiana, Hammond Division. No. 2:18-cr-00052-JTM-JEM-1 — **James T. Moody**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; DANIEL A. MANION, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*.

ORDER

Cristian Yupa Yupa was born in Canar, Ecuador, and is a member of the indigenous Kichwa tribe. He immigrated to the United States in 2000 to escape, he alleges, gang recruitment. While in Ecuador, he began a sexual relationship with a young girl. This relationship continued when the two came to the United States where, when he was 25, and she was 14, he was arrested and pled guilty in the Circuit Court of Cook County, Illinois, to the state crime of criminal sexual abuse of a minor. Following his release from prison in 2004, the government deported him to Ecuador. He subsequently re-entered the United States without permission, and on April 24, 2018, he was detained while at a job site in Indiana. He was arrested on May 23, 2018, and stipulated to pretrial detention. The government charged Yupa Yupa with one count of entering the United States without permission, to which he pled guilty without a plea agreement, on July 20, 2018. Because this is a case about timing, we must thread through some of the other key dates. The probation office filed its presentence investigation report on October 18, 2018. The government filed its sentencing memorandum on October 28, 2018, and Yupa Yupa filed his sentencing memorandum on October 29, 2018. On November 21, 2018, Yupa Yupa filed a motion to schedule a sentencing hearing. The court issued an order on February 11, 2019, scheduling the sentencing hearing for May 10, 2019. In short, the court held Yupa Yupa's sentencing hearing a little less than ten months after he entered his guilty plea and about twelve and a half months after his original detention....The six-and-a-half-month delay between the filing of the sentencing memoranda and the sentence (or the under-ten-month delay between the guilty plea and the sentencing) did not prejudice Yupa Yupa and therefore did not violate his rights under the Due Process Clause. The judgment of the district court is AFFIRMED.

Allen Bedynek Stumm v. Robert Wilkie No. 18-2978

Submitted November 21, 2019 — Decided December 3, 2019

Case Type: Civil

Western District of Wisconsin. No. 12-cv-057-wmc — **William M. Conley**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*.

ORDER

Allen Bedynek Stumm sued the federal Department of Veterans Affairs for discriminating against him by twice hiring younger women instead of him. In a series of orders, the district court dismissed his various claims. Because the district court did not apply the proper pleading standard, we vacate in part and remand.

Amy Harnishfeger v. USA No. 18-1865

Argued November 28, 2018 — Decided December 3, 2019

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:16-cv-03035-TWP-DLP — **Tanya Walton Pratt**, *Judge*.

Before ROVNER, HAMILTON, and BRENNAN, *Circuit Judges*.

HAMILTON, *Circuit Judge*. This appeal deals with First Amendment protection for public employees when they engage in speech that is not related or tied to their work. Plaintiff Amy Harnishfeger authored a short book, published under a pseudonym, about her time as a phone-sex operator called *Conversations with Monsters: 5 Chilling, Depraved and Deviant Phone Sex Conversations*. A month after publishing *Conversations*, Harnishfeger began what was to have been a one-year stint with the Indiana Army National Guard as a member of the Volunteers in Service to America (VISTA) program, a federal antipoverty program administered by the Corporation for National and Community Service (CNCS). But when Harnishfeger's National Guard supervisor discovered *Conversations* and identified Harnishfeger as its author, she demanded that CNCS remove Harnishfeger from her position. CNCS complied. Harnishfeger was unable to find another suitable placement for the remainder of her VISTA service, so, three months after she started, CNCS cut her from the program entirely. Harnishfeger filed this suit alleging violations of her rights under the First Amendment and the Administrative Procedure Act (APA). The district court granted the defendants' motions for summary judgment. *Harnishfeger v. United States*, 2018 WL 1532691 (S.D. Ind. March 29, 2018). Harnishfeger appeals. We reverse in part and affirm in part. *Conversations with Monsters* is clearly protected speech, and on this record, a jury could find that Harnishfeger's National Guard supervisor, Lieutenant Colonel Lisa Kopczynski, infringed her free speech rights by removing her from her placement because of it. We find no basis, however, for holding CNCS or its employees liable, so we affirm the judgment in favor of the federal defendants.

David Mueller v. City of Joliet No. 18-3609

Argued November 4, 2019 — Decided December 4, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17-C-07938 — **Harry D. Leinenweber**, *Judge*.

Before WOOD, *Chief Judge*, and BAUER and BRENNAN, *Circuit Judges*.

BAUER, *Circuit Judge*. Sergeant David Mueller took a leave of absence from the City of Joliet Police Department to report for active duty in the Illinois National Guard Counterdrug Task Force. When the Joliet Police Department placed him on unpaid leave, Mueller resigned from his National Guard position and sued the City of Joliet and his supervisors for employment discrimination. The issue on appeal is whether the Uniformed Service Members Employment and Re-employment Rights Act ("USERRA"), which prohibits discrimination against those in "service in a uniformed service," protects Mueller's National Guard duty. Mueller sued under USERRA, claiming that the Joliet Police Department's denial of compensation and benefits while he was on National Guard duty amounted to illegal, anti-military discrimination. The defendants moved to dismiss the complaint, arguing that his National Guard counterdrug duty was authorized under Illinois law and not covered by USERRA. The district court judge agreed and granted the defendants' motion to dismiss. Mueller appeals and argues that "service in the

uniformed services” explicitly covers full-time National Guard duty, including counterdrug activities under 32 U.S.C. §§ 112 and 502(f). We find that the plain language of USERRA covers Title 32 full-time National Guard duty and reverse the district court’s dismissal.

Matthew Flynn v. Karen Donnelly No. 18-2590

Argued November 14, 2019 — Decided December 4, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-C-502 — **Gary Feinerman**, *Judge*.

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

ORDER

Matthew Flynn and Steven Pirro defeated felony drug charges when the Illinois courts quashed the evidence against them because the special law enforcement unit that arrested them was illegitimate. In the wake of those decisions, Flynn and Pirro sued in federal court under 42 U.S.C. § 1983, but the district court dismissed their complaint because the statute of limitations had run and because the complaint did not state a federal claim. The appellants challenge only the court’s decision on timeliness, but their arguments are mistaken, so we affirm.

Risa Stegall v. Andrew M. Saul No. 18-2345

Argued September 26, 2019 — Decided December 4, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14-C-00178 — **Robert M. Dow, Jr.**, *Judge*.

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

BAUER, *Circuit Judge*. Risa Stegall applied and interviewed for a service representative position with the Social Security Administration (“SSA”) in 2010. Stegall claims she received an offer of employment at the end of her interview. Stegall subsequently disclosed her physical and mental disabilities which she claims prompted the SSA to rescind the employment offer. The SSA denied offering Stegall a position, stating it never extends offers of employment during interviews. Instead, the SSA deemed Stegall not motivated for public service due to her answers in the interview. The SSA preferred two applicants over Stegall—one who had accepted another position and one with a disability who accepted the position. Stegall filed an employment discrimination claim with the SSA, claiming discrimination based on race and her mental and physical disabilities. The SSA denied Stegall’s claim and she appealed to the Equal Employment Opportunity Commission. Stegall then filed a discrimination claim in the district court. Prior to trial, Stegall dismissed her race and mental disability discrimination claims. At trial, the jury found that Stegall had a disability, that the SSA regarded her as having a disability, and that the SSA failed to hire Stegall. However, the jury found that even without her physical disability, Stegall would not have been hired. Stegall appeals, claiming the jury verdict went against the manifest weight of the evidence and that the court abused its discretion in allowing certain evidence to be admitted. We conclude that the district court did not commit reversible errors and affirm.

USA v. Kenneth Schmitt No. 19-1548

Argued November 13, 2019 — Decided December 6, 2019

Case Type: Criminal

Southern District of Indiana, Evansville Division. No. 3:11-cr-00048-RLY-CMM — **Richard L. Young**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

In December 2018, this panel granted a joint motion by Kenneth Schmitt and the government to vacate his sentence and remand for a second resentencing on his conviction for unlawful possession of a firearm. The parties agreed that the district court erred when it failed to recognize its discretion to adjust Schmitt's sentence to account for good-time credit he could have earned had his state sentence been served in federal prison. The district court imposed the same 99-month prison sentence on remand. In this appeal, Schmitt argues that the district court again failed to understand its discretion to adjust his sentence to account for the good-time credit. But we interpret the judge's remarks at the sentencing hearing to mean that he recognized his discretion to reduce the sentence but declined to exercise it. Schmitt also contests a term of supervised release, but we are unpersuaded by his challenge. Therefore, we affirm the judgment.

Michael Johnson v. Anthony Garant No. 19-1383

Submitted November 21, 2019 — Decided December 6, 2019

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 17-C-7293 — *Manish S. Shah*, Judge.

Before DIANE P. WOOD, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*.

ORDER

Michael Johnson, an inmate at the Stateville Correctional Center in Illinois, alleged that three correctional officers knew he was in imminent danger of suicide but took no steps to prevent his suicide attempt, in violation of his Eighth Amendment rights. The district court entered summary judgment for the defendants, concluding that no reasonable jury could find that any officer was deliberately indifferent to a known risk that Johnson would attempt suicide. We affirm the judgment.

USA v. Nicholas Edwards No. 18-3282

Argued September 11, 2019 — Decided December 6, 2019

Case Type: Criminal

Western District of Wisconsin. No. 3:18-cr-00023-jdp-1 — **James D. Peterson**, *Chief Judge*.

Before RIPPLE, ROVNER, and BARRETT, *Circuit Judges*.

ROVNER, *Circuit Judge*. Nicholas Edwards pleaded guilty to failing to register as a sex offender, in violation of the Sex Offender Registration and Notification Act, 18 U.S.C. § 2250—his fourth conviction for a failure to register a change of address as required by state and federal statutes. The district court ordered him to serve a prison term of 27 months and imposed three conditions that will govern his supervised release at the conclusion of that term: (1) a requirement that, as required by his probation officer, he inform employers, neighbors and family members with children, and others of his criminal record, his obligation to register as a sex offender, and the other requirements imposed by SORNA; (2) a ban on meeting, spending time with, or communicating with any minor absent the express permission of the minor's parent or guardian and the probation officer; and (3) a bar to working in any job or participating any volunteer activity in which he would have access to minors, absent prior approval of his probation officer. Finding no flaw in any of these conditions, we affirm the judgment.

USA v. Jason Laut No. 18-2843

Argued November 13, 2019 — Decided December 6, 2019

Case Type: Criminal

Southern District of Illinois. No. 3:17-cr-30001-DRH-1 — **David R. Herndon**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Jason Laut, formerly a paramedic supervisor for an ambulance company, was convicted of tampering with prescription fentanyl and then covering his tracks by doctoring business records. He argues for the first time on appeal that the government's evidence on the tampering charge varied so much from the operative indictment that it amounted to an impermissible constructive amendment. He also challenges the admission of evidence suggesting he was addicted to fentanyl, which he sees as propensity-based. We affirm because Laut has not shown plain error as to the purported constructive amendment, and because he has not met his burden of showing that the evidence of addiction affected his substantial rights.

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](#).