

## **Opinions for the week of December 7 - December 11, 2015**

### **USA v. Saulo Salinas-Ospina** No. 15-2564

Submitted December 4, 2015 — Decided December 7, 2015

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 05 CR 601-1 — **Rebecca R. Pallmeyer**, *Judge*.  
Before KENNETH F. RIPPLE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

### **ORDER**

Saulo Salinas-Ospina sought to reduce his 168-month prison sentence based on Amendment 782 to the federal sentencing guidelines, which retroactively reduced the guideline range for his crime. The district court denied the motion, reasoning that it did not have the authority to reduce his sentence because it was already at the low end of the new range. Its analysis is correct, so we affirm the judgment.

### **Michael Hughes v. Michael Farris** No. 15-1801

Submitted October 29, 2015 — Decided December 7, 2015

Case Type: Civil

Central District of Illinois. No. 15-3038 — **Harold A. Baker**, *Judge*.  
Before WOOD, *Chief Judge*, and POSNER and EASTERBROOK, *Circuit Judges*.

WOOD, Chief Judge. Michael Hughes alleges that an employee of the facility where he is civilly committed abused him because he is a homosexual; another employee suspended his treatment for complaining about it. He is confined at the Treatment and Detention Facility in Rushville, Illinois, as a result of his designation as a sexually violent person for purposes of Illinois's Sexually Violent Persons Commitment Act, 725 ILCS 207/1–99. Invoking 42 U.S.C. § 1983, Hughes sued Michael Farris, the supervisor of the laundry, and Krista Wilcoxon, Rushville's rehabilitation director. After interviewing Hughes at a "merit-review" hearing and screening his complaint under 28 U.S.C. § 1915(e)(2), the district court concluded that he had failed to state a claim and dismissed the case. We vacate that judgment and remand.

### **Christopher Goodvine v. George Monese** No. 15-1752

Submitted October 29, 2015 — Decided December 7, 2015

Case Type: Prisoner

Eastern District of Wisconsin. No. 13-CV-1057 — **Lynn Adelman**, *Judge*.  
Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*.

### **ORDER**

Christopher Goodvine, a Wisconsin inmate, suffers from mental illness and has a history of self-harm and suicide attempts. In this action under 42 U.S.C. § 1983, Goodvine claims that a prison psychiatrist violated the Eighth Amendment by not intervening to forestall a suicide attempt that left him seriously injured. The district court granted summary judgment for the defendant. Because we conclude that the district court should have recruited counsel for Goodvine, we vacate the judgment and remand for further proceedings.

### **Stacy Perkins v. Carolyn Colvin** No. 15-1708

Submitted December 4, 2015 — Decided December 7, 2015

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:13-cv-01428-TWP-DML — **Tanya Walton Pratt**, *Judge*.  
Before KENNETH F. RIPPLE, *Circuit Judge*;ILANA DIAMOND ROVNER, *Circuit Judge*;ANN CLAIRE WILLIAMS, *Circuit Judge*.

#### **ORDER**

Stacy Perkins, a 55-year-old who claims that he is disabled due to back pain, shoulder pain, depression, and anxiety appeals the district court's judgment upholding the Social Security Administration's denial of his application for Disability Insurance Benefits and Supplemental Security Income. An administrative law judge denied benefits because she found that suitable jobs exist for Perkins given his residual functional capacity. On appeal Perkins challenges the ALJ's decision on two grounds, but both are waived because they were not raised in the district court. We thus affirm the judgment.

#### **Deborah Slayton v. Carolyn Colvin** No. 15-1254

Argued November 17, 2015 — Decided December 7, 2015

Case Type: Civil

Western District of Wisconsin. No. 14-cv-117-bbc — **Barbara B. Crabb**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*;FRANK H. EASTERBROOK, *Circuit Judge*;DAVID F. HAMILTON, *Circuit Judge*.

#### **ORDER**

Deborah Slayton applied for Disability Insurance Benefits and Supplemental Security Income claiming disability from several impairments. An administrative law judge denied benefits (a decision upheld by the district court). The ALJ found that Slayton was exaggerating the extent of her symptoms and concluded that, in fact, she is able to perform unskilled, light work with certain restrictions. Because the ALJ's credibility assessment is not patently wrong and is supported by substantial evidence, we uphold the denial of benefits.

#### **BBL, Incorporated v. City of Angola** No. 14-1199

Argued November 4, 2014 — Decided December 7, 2015

Case Type: Civil

Northern District of Indiana, Fort Wayne Division. No. 1:13-CV-76-RLM-RBC — **Robert L. Miller, Jr.**, *Judge*.

Before MANION, WILLIAMS, and SYKES, *Circuit Judges*.

SYKES, *Circuit Judge*. Alva and Sandra Butler and their company, BBL, Inc. (we'll refer to them collectively as "BBL"), purchased a restaurant in the City of Angola, Indiana, and planned to convert it to an adult-entertainment venue featuring nude dancing. Within days of the purchase, Angola amended its zoning and other ordinances to make this use of the property impossible. The Butlers and their company brought this suit alleging claims for violation of their rights under the First Amendment and Indiana law. They moved for a preliminary injunction. The district court denied the motion, and the plaintiffs took this interlocutory appeal seeking review of that decision... AFFIRMED.

#### **Scott McMahon v. LVNV Funding, LLC** No. 15-8018

Submitted September 9, 2015 — Decided December 8, 2015

Case Type: Miscellaneous

Northern District of Illinois, Eastern Division. No. 12 C 1410 — **Jorge Alonso**, *Judge*.

Before WOOD, *Chief Judge*,and FLAUM and SYKES, *Circuit Judges*.

WOOD, Chief Judge. Scott McMahon, the plaintiff in this putative class action arising under the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq., sought to certify a class of persons in Illinois who had received misleading dunning letters from defendant LVNV Funding, LLC. (There are other defendants, but for simplicity we refer to them collectively as LVNV.) After the district court declined to certify the class, McMahon petitioned this court under Federal Rule of Civil Procedure 23(f) for permission to appeal that decision. We grant McMahon's petition and proceed to the merits, because the parties' comprehensive submissions—together with the record in the district court—suffice to decide this limited question. We conclude that the district court's decision to deny class certification was erroneous and thus that the case must be sent back to the district court for further proceedings on the class allegations.

**USA v. George Van Til** No. 15-1385

Argued October 6, 2015 — Decided December 8, 2015

Case Type: Criminal

Northern District of Indiana, Hammond Division. No. 2:13cr68-001 — **James T. Moody**, *Judge*.  
Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; RICHARD A. POSNER, *Circuit Judge*.

**ORDER**

Lake County, Indiana, forbids its employees to work on political campaigns for their supervisors while they are being paid by the county. George Van Til, the county surveyor, violated those rules and wound up indicted by a federal grand jury on six counts of wire fraud. See 18 U.S.C. §§ 1343, 2(a). Van Til pleaded guilty to those charges pursuant to a plea agreement in which he waived his right to appeal “all components of [his] sentence or the manner in which [his] ... sentence was determined or imposed.” The district court sentenced him to 18 months' imprisonment, three years' supervised release, \$600 in special assessments, and \$26,502.74 in restitution to the County. Notwithstanding the waiver we just quoted, Van Til has brought this appeal, in which he asserts that the restitution component of his sentence is too high. Whether or not this point would have had merit, however, is beside the point. Nothing in the present record justifies disregarding the appeal waiver, and so we dismiss this appeal.

**Barbara Stahl v. Carolyn Colvin** No. 15-1273

Argued October 6, 2015 — Decided December 8, 2015

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 752 — **Mary M. Rowland**, *Magistrate Judge*.  
Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

**ORDER**

Barbara Stahl is seeking disability benefits based on an array of physical and mental problems, including diabetic neuropathy, degenerative disc disease, depression, and anxiety. Thus far, her efforts have been unsuccessful. An administrative law judge found that, despite these serious medical conditions, she retains the residual functional capacity (RFC) to perform light work with certain limitations; the district court upheld that decision. Stahl challenges the ALJ's findings concerning her credibility, the weight accorded the opinions of treating physicians, and the judge's assessment of her residual functional capacity. We conclude that these findings are not supported by substantial evidence, and so we reverse.

**Michael Flournoy v. Winnebago County Sheriff's Department** No. 15-1728

Submitted December 4, 2015 — Decided December 9, 2015

Case Type: Prisoner

Western District of Wisconsin. No. 14-cv-528-jdp — **James D. Peterson**, *Judge*.

Before KENNETH F. RIPPLE, *Circuit Judge*;ILANA DIAMOND ROVNER, *Circuit Judge*;ANN CLAIRE WILLIAMS, *Circuit Judge*.

#### **ORDER**

Michael Flournoy was arrested in July 2012 after an investigation conducted jointly by federal and state authorities. Initially he was charged with drug crimes under Illinois law, but state prosecutors voluntarily dismissed those charges when federal authorities decided to prosecute. A jury in federal court found Flournoy guilty of conspiracy and attempted possession of cocaine, and the district court sentenced him to a total of 204 months' imprisonment. Flournoy's direct appeal from those convictions remains pending. See *United States v. Flournoy*, No. 14-2325 (7th Cir. filed June 11, 2014). Meanwhile, after he was sentenced, Flournoy filed this action under 42 U.S.C. § 1983. At screening, see 28 U.S.C. § 1915A, the district court read Flournoy's amended complaint to allege that he was arrested in July 2012 without probable cause, in violation of the Fourth Amendment. The court dismissed the suit for failure to state a claim, reasoning that Flournoy's own account of the events preceding his arrest establishes the existence of probable cause... AFFIRMED.

#### **Patricia Shumaker v. Carolyn Colvin** No. 15-1923

Argued November 17, 2015 — Decided December 10, 2015

Case Type: Civil

Northern District of Indiana, Fort Wayne Division. No. 1:13cv268 — **Joseph S. Van Bokkelen**, *Judge*. Before JOEL M. FLAUM, *Circuit Judge*;FRANK H. EASTERBROOK, *Circuit Judge*;DAVID F. HAMILTON, *Circuit Judge*.

#### **ORDER**

Patricia Shumaker applied for Disability Insurance Benefits claiming to be disabled by injuries from a motorcycle accident along with depression, anxiety, and borderline intellectual functioning. An administrative law judge disbelieved her testimony that these conditions were disabling and concluded that she retained the residual functional capacity to perform light work with certain limitations. Shumaker challenges this adverse credibility finding and the ALJ's assessment of her residual functional capacity. We conclude that substantial evidence supports the ALJ's decision.

#### **Todd Michalec v. Carolyn Colvin** No. 15-1825

Argued November 17, 2015 — Decided December 10, 2015

Case Type: Civil

Central District of Illinois. No. 14-1005 — **Joe Billy McDade**, *Judge*. Before JOEL M. FLAUM, *Circuit Judge*;FRANK H. EASTERBROOK, *Circuit Judge*;DAVID F. HAMILTON, *Circuit Judge*.

#### **ORDER**

Todd Michalec was denied disability insurance benefits after claiming that severe osteoarthritis, cervical spine degeneration, and other ailments left him incapable of working. An administrative law judge found that Michalec still had the residual functional capacity to perform sedentary work during the insured period. On judicial review, Michalec argues that the ALJ overlooked critical evidence and made a patently erroneous credibility assessment. We disagree. Substantial evidence supports the ALJ's decision, so we affirm.

#### **USA v. David Kadlec** No. 15-2292

Submitted December 8, 2015 — Decided December 11, 2015

Case Type: Criminal

Eastern District of Wisconsin. No. 97-CR-98 — **J.P. Stadtmueller**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*.

#### **ORDER**

We affirmed David Kadlec's convictions and sentences in *United States v. Warneke*, 310 F.3d 542 (7th Cir. 2002). Eleven years later, in 2013, Kadlec asked the district court to reduce his sentence under Amendment 591 to the Sentencing Guidelines, which became effective on November 1, 2000—before his direct appeal was resolved... **AFFIRMED.**

#### **Debra Marshall v. Woodward, Inc.** No. 15-1866

Argued October 29, 2015 — Decided December 11, 2015

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:06-CV-01746 — **Gary S. Feinerman**, *Judge*.  
Before FLAUM, MANION, and ROVNER, *Circuit Judges*.

FLAUM, *Circuit Judge*. Plaintiffs Debra Marshall and Peggy Thurman bring this *qui tam* action against Woodward, Inc. under the False Claims Act (“FCA”). Plaintiffs allege that Woodward falsely certified helicopter engine parts that it sold to the government... we affirm the judgment of the district court.

#### **Citadel Securities LLC v. Chicago Board Options Exchange** Nos. 14-2912, 14-3071

Argued November 12, 2015 — Decided December 11, 2015

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:13-CV-05833 — **Robert W. Gettleman**, *Judge*.  
Before BAUER, FLAUM, and MANION, *Circuit Judges*.

FLAUM, *Circuit Judge*. Plaintiffs Citadel Securities, LLC, et al., sued defendants Chicago Board Options Exchange, Inc., et al., in Illinois state court, seeking to recover fees they claim were improperly charged to and paid by plaintiffs to defendants under defendants’ “payment for order flow” programs. Defendants removed the case to federal district court. The district court dismissed the case for lack of subject matter jurisdiction... we **AFFIRM** the judgment of the district court.

#### **USA v. Abidemi Ajayi** No. 14-2183

Argued May 21, 2015 — Decided December 11, 2015

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 12 CR 190 — **Rebecca R. Pallmeyer**, *Judge*.  
Before WOOD, *Chief Judge*, and ROVNER and WILLIAMS, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. Abidemi Ajayi deposited a \$344,657.84 fraudulent check, which had originally been written to another company, into his bank account. Ajayi spent about half of the money before the bank froze his account. He was indicted and convicted after a jury trial of five counts of bank fraud and one count of money laundering. He now appeals his conviction arguing that the evidence was insufficient to establish that he knew the check was altered. However, we find that the evidence of his guilt, which includes all the facts and circumstances surrounding the check, was compelling and sufficient to support the conviction. He also challenges the district court’s decision to exclude certain emails related to his business plan to secure MRI machines because they were not related to the case. We agree with the district court and find that the emails were irrelevant because the emails had nothing to do with the fraudulent check or the person Ajayi claims sent him the check. Next, Ajayi contends that the district court erred by only submitting to the jury a portion of the pattern jury instruction that defines scheme, which would permit the jury to find him guilty without proof of misrepresentation. But, we find no error in the jury instructions because the instructions, reviewed as a whole, did not permit the jury to find him guilty

without finding proof of misrepresentation. He also contends that the five bank fraud counts were multiplicitous. Since the four counts of bank fraud arose from Ajayi's acts of withdrawing funds after he deposited the fraudulent check and were merely in furtherance of the bank fraud, we conclude that four bank fraud counts were multiplicitous. Therefore, we vacate four of the bank fraud convictions. Finally, he asserts that there was a variance or a constructive amendment between the indictment and the proof offered at trial, but this contention is without merit.

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](#).