

## **Opinions for the week of December 7 – December 11, 2020**

### **USA v. Qubid M. Coleman** No. 20-1945

Submitted December 7, 2020 — Decided December 7, 2020

Case Type: Criminal

Central District of Illinois. No. 12-cr-40031-006 — Sara Darrow, *Chief Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

### **ORDER**

Qubid Coleman, a federal prisoner, moved to reduce his sentence under the First Step Act, arguing that the Act retroactively reduced the statutory minimum sentence for the cocaine-trafficking offense to which he pleaded guilty, 21 U.S.C. § 841(b)(1)(A). The district court denied his motion because his sentence already complies with the retroactive provision of the Act. We agree and affirm.

### **USA v. Samuel Hogsett** No. 19-3465

Argued October 2, 2020 — Decided December 7, 2020

Case Type: Criminal

Southern District of Illinois. No. 05-cr-30196 — **Staci M. Yandle**, *Judge*.

Before RIPPLE, KANNE, and HAMILTON, *Circuit Judges*.

KANNE, *Circuit Judge*. Samuel Hogsett was sentenced to nearly thirty years in prison after a jury convicted him of three crimes. One of those crimes was possession of crack cocaine with intent to distribute. 21 U.S.C. § 841(a)(1), (b)(1)(C). Since Hogsett's sentencing, Congress has passed two laws—the Fair Sentencing Act of 2010 and the First Step Act of 2018—which permit federal inmates to seek a sentence reduction for certain “covered offenses.” Hogsett argues, and we agree, that possession with intent to distribute crack cocaine, in violation of § 841(a)(1), (b)(1)(C), is a covered offense. Accordingly, we reverse the district court's conclusion to the contrary and remand for the district court to reconsider Hogsett's sentence.

### **Ann Bell v. Albertson Companies, Inc.** Nos. 19-2581 & 19-2741

Argued September 17, 2020 — Decided December 7, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:16-cv-05802 — **Gary Feinerman**, *Judge*.

Before KANNE and HAMILTON, *Circuit Judges*.

KANNE, *Circuit Judge*, concurring.

HAMILTON, *Circuit Judge*. This case is about Parmesan cheese—specifically the kind sold in familiar shaker tubes in grocery stores across the country. The defendants sell these products with labels advertising them as “100% Grated Parmesan Cheese.” The plaintiffs say these products are not 100 percent cheese, but rather contain between four and nine percent added cellulose powder and potassium sorbate, as is evident to a consumer who takes the time to read the fine print of an ingredient list on the back of the package. Plaintiffs claim that these ingredient lists show that the prominent “100%” labeling is deceptive under state consumer-protection laws. The Judicial Panel on Multidistrict Litigation transferred numerous similar actions to the Northern District of Illinois for consolidated pretrial proceedings under 28 U.S.C. § 1407. Plaintiffs then reorganized their claims into five amended consolidated complaints, organized by defendant. In a series of orders, the transferee district court ultimately dismissed the plaintiffs' deceptive labeling claims (“the 100% claims”) with prejudice for failure to state a claim. Plaintiffs appeal those dismissals. With respect to three of the plaintiffs' consolidated complaints, the 100% claims should have survived the defendants' motion to dismiss. Plaintiffs have plausibly alleged that the

prominent “100%” labeling deceives a substantial portion of reasonable consumers, and their claims are not preempted by federal law. For reasons specific to the management of the multidistrict litigation, however, we lack appellate jurisdiction to review the district court’s dismissal of the 100% claims in two of the plaintiffs’ consolidated complaints (against Publix and Target/ICCO) because the appeals were filed too late. In Part I, we address the merits of the 100% claims. In Part II, we explain why we lack appellate jurisdiction over the district court’s dismissal of the latter two complaints... In Appeal No. 19-2741, the partial final judgments dismissing the 100% claims alleged in the consolidated Kraft, Albertsons, and Walmart/ICCO complaints are REVERSED and those cases are REMANDED for further proceedings consistent with this opinion. Appeal No. 19-2581, involving the consolidated complaints against Publix and Target/ICCO, is DISMISSED for lack of appellate jurisdiction.

**USA v. Andy Carter** No. 20-2336

Submitted December 7, 2020 — Decided December 8, 2020

Case Type: Criminal

Northern District of Illinois, Western Division. No. 04 CR 50032 — **Philip G. Reinhard**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge* DANIEL A. MANION, *Circuit Judge* AMY J. ST. EVE, *Circuit Judge*

**ORDER**

Andy Carter, a federal inmate suffering serious medical conditions, sought compassionate release under 18 U.S.C. § 3582 based on his susceptibility to COVID-19 and his disabled wife’s needs for assistance. The district court denied his request, concluding that he had not shown sufficiently compelling reasons under the statute to justify release. Because the judge carefully weighed the sentencing factors set forth in 18 U.S.C. § 3553(a), we affirm.

**Cheikh Seye v. Trustees of Indiana University** No. 20-1969

Submitted December 7, 2020 — Decided December 8, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:17-cv-04384-JPH-MJD — **James Patrick Hanlon**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

**ORDER**

Indiana University denied Cheikh Seye tenure after considering, then reconsidering, his candidacy. Seye, who was injured in two car accidents during the review process, sued for retaliation under the Rehabilitation Act, and the district court granted the university’s motion for summary judgment. Because Seye did not introduce sufficient evidence based on which a reasonable jury could find that, but for retaliation, he would have been granted tenure, we affirm.

**USA v. Juliano Melgarejo** No. 20-1802

Submitted December 7, 2020 — Decided December 8, 2020

Case Type: Criminal

Central District of Illinois. No. 12-cr-20050-JES-DGB — **James E. Shadid**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

**ORDER**

Juliano Melgarejo, an inmate at the Federal Correctional Institution in Oxford, Wisconsin, asked the district court to grant him an early release under 18 U.S.C. § 3582(c)(1)(A)(i). The court denied

Melgarejo's motion, and because it did not abuse its discretion in determining that he had not demonstrated extraordinary and compelling circumstances, we affirm.

**USA v. Corey Johnson** No. 20-1749

Submitted December 7, 2020 — Decided December 8, 2020

Case Type: Criminal

Central District of Illinois. No. 1:07-cr-10044 — **Joe Billy McDade**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

**ORDER**

More than a decade after he was convicted of conspiring to distribute powder cocaine and cocaine base (crack), Corey Johnson sought to reduce his life sentence under the First Step Act of 2018. The district court concluded that it lacked discretion to alter a powder-cocaine sentence such as Johnson's and denied his request. We affirm.

**Shomas T. Winston v. Larry Fuchs** No. 20-1643

Submitted December 7, 2020 — Decided December 8, 2020

Case Type: Prisoner

Western District of Wisconsin. No. 18-cv-953-jdp — **James D. Peterson**, *Chief Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

**ORDER**

Shomas Winston, a federal inmate, was disciplined after he violated an order not to contact a female psychologist. Before violating that order, Winston had filed an unsuccessful grievance to contest the order. Winston now sues prison staff, accusing them of violating the First Amendment by disciplining him in retaliation for his grievance. The district court entered summary judgment for the defendants. The record undisputedly shows that the discipline occurred because Winston violated the no-contact order, so we affirm.

**Lois Yankah v. DuPage County, Illinois** No. 20-1618

Submitted December 7, 2020 — Decided December 8, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 19 C 1936 — **Jorge L. Alonso**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

**ORDER**

Lois Yankah, a former pretrial detainee, sued DuPage County officials for a host of alleged civil rights violations in the county jail while she awaited trial for check fraud. The district court dismissed her suit with prejudice for failure to state a claim after twice granting her leave to cure defects in her filings, and Yankah unsuccessfully moved for relief from the judgment. FED. R. CIV. P. 60(b). In a prior order, we limited her appeal to the denial of her Rule 60(b) motion, and because Yankah argues only that the underlying judgment was incorrect, we affirm.

**Courtney McFields v. Thomas Dart** No. 20-1391

Argued October 27, 2020 — Decided December 8, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17 C 7424 — **John Robert Blakey**, *Judge*.  
Before SYKES, *Chief Judge*, and KANNE and ST. EVE, *Circuit Judges*.

KANNE, *Circuit Judge*. Plaintiff Courtney McFields, once a detainee at Illinois's Cook County Jail, brought a putative class action against Cook County and its sheriff for allegedly depriving McFields and other detainees of adequate dental care. The district court denied class certification, and McFields appealed. Because we conclude that the district court did not abuse its discretion, we affirm its decision.

**Ronald Shea v. Douglas Koehler** No. 19-3424

Submitted December 7, 2020 — Decided December 8, 2020

Case Type: Civil

Northern District of Illinois, Western Division. No. 12 C 50201 — **Philip G. Reinhard**, *Judge*.  
Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

### ORDER

This is the second appeal in proceedings that arose out of an altercation between Ronald Shea and family members. In a prior order, we sorted out a sprawling assortment of claims—upholding the dismissal of Shea's federal claims and some state-law claims but vacating the dismissal of other state-law claims and remanding for further proceedings. *Shea v. Winnebago Cty. Sheriff's Dep't*, 746 F. App'x 541 (7th Cir. 2018). On remand, the district court concluded that it lacked diversity jurisdiction and relinquished supplemental jurisdiction over the remaining state-law claims. In this appeal, Shea concedes that diversity jurisdiction is absent but contends that the absence requires vacating the entire judgment. We affirm.

**Jeanette Lipinski v. Yolanda Castaneda** No. 19-3395

Submitted December 7, 2020 — Decided December 8, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 16 C 7153 — **Jorge L. Alonso**, *Judge*.  
Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

### ORDER

In this suit alleging an unreasonable arrest, Jeanette Lipinski lost at summary judgment because she failed to comply with a local rule, of which she had notice, requiring her to cite evidence supporting her claim. After the defendants moved for summary judgment, the district court applied that rule to deem their facts admitted, and based on those admissions it entered summary judgment. Because district courts may reasonably require that even pro se litigants strictly comply with local rules, the district court did not abuse its discretion, and therefore we affirm.

**Jerry Jellis v. Larry Hale** No. 19-3362

Submitted December 7, 2020 — Decided December 8, 2020

Case Type: Prisoner

Southern District of Illinois. No. 3:15-cv-00630-GCS — **Gilbert C. Sison**, *Magistrate Judge*.  
Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

### ORDER

Jerry Jellis, formerly an inmate at Menard Correctional Center, lost at trial on his claim charging two prison officers with excessive force. On appeal he challenges several evidentiary rulings made before and during trial. Because the district court's rulings reflect an appropriate exercise of discretion, we affirm.

**Dan Williams v. Board of Education of the City** No. 19-3152

Argued September 25, 2020 — Decided December 8, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:16-cv-11467 — **Virginia M. Kendall**, *Judge*.

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

RIPPLE, *Circuit Judge*. Dan Williams brought this action against his employer, the Board of Education of the City of Chicago ("Board"), under the Americans with Disabilities Act ("ADA"), see 42 U.S.C. § 12101 et seq., and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. He alleged that the Board had discriminated against him because of his disability and gender, otherwise failed to accommodate his disability, and unlawfully retaliated against him for filing claims under Title VII and the ADA. After discovery, the Board moved for summary judgment on all claims. The district court granted the motion, and Mr. Williams timely appealed. We affirm the judgment of the district court.

**Joseph Ocol v. Chicago Teachers Union** No. 20-1668

Submitted September 29, 2020 — Decided December 9, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18 CV 8038 — **Harry D. Leinenweber**, *Judge*.

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

ROVNER, *Circuit Judge*. In *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018) (*Janus I*), the Supreme Court reversed course on 41 years of jurisprudence sanctioning agreements between state-government agencies and unions authorizing the unions to collect fair-share fees from non-union members to cover costs incurred representing them. Joseph Ocol, a math teacher in the Chicago public school system, then filed this putative class action lawsuit under 42 U.S.C. § 1983 and 28 U.S.C. § 2201 against the Chicago Teachers Union and the American Federation of Teachers ("Union defendants") as well as the Attorney General of Illinois and the chair and members of the Illinois Educational Labor Relations Board ("state defendants"). As relevant here, he sought recovery of payments he had previously made under protest to the Chicago Teachers Union and also challenged the constitutionality of the exclusive representation provisions of Illinois law as they applied to non-union members. Ultimately the district court dismissed or granted summary judgment to all defendants, and Ocol appeals. As Ocol admits, however, his claims are barred by existing precedent, and we therefore affirm.

**Notre Dame Affordable Housing, v. City of Chicago** No. 20-1486

Argued November 10, 2020 — Decided December 9, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:18-cv-8116 — **Charles R. Norgle**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

**ORDER**

All parties invoking a federal court's jurisdiction must demonstrate an injury in fact as one part of establishing standing to sue under Article III. When plaintiffs cannot show such an injury, the court lacks authority to proceed further and must dismiss the action, as happened here. Notre Dame Affordable Housing and its principal officer, Charlene Marsh, asserted ownership of a parcel of property in Chicago and sued the City and others for demolishing a building on that land. The district court dismissed the

plaintiffs' claims because neither Notre Dame Affordable Housing nor Marsh proffered evidence showing any interest in the property, so neither could show injury due to the demolition. We agree and affirm.

**Nancy Knudtson v. Trempealeau County, Wisconsin** No. 19-3237

Argued October 2, 2020 — Decided December 9, 2020

Case Type: Civil

Western District of Wisconsin. No. 3:18-cv-00354-wmc — **William M. Conley**, *Judge*.

Before RIPPLE, KANNE, and HAMILTON, *Circuit Judges*.

RIPPLE, *Circuit Judge*. When his friend and mentor passed away, Taavi McMahon, the District Attorney for Trempealeau County, Wisconsin, decided to close his office for the day of the funeral and encouraged his staff to attend the service. One of those staff members, Nancy Knudtson, refused to attend because she wanted to complete some work at the office. Mr. McMahon took issue with Ms. Knudtson's decision and both dug in their heels for what became a bitter dispute. Eventually, the County placed Ms. Knudtson on paid administrative leave in an effort to de-escalate the dispute. Later, the County offered her another position at the same pay grade; Ms. Knudtson declined the alternate position. Because the County had no other available position, it then terminated her employment. Ms. Knudtson filed this action in the United States District Court for the Western District of Wisconsin, alleging that Mr. McMahon and Trempealeau County had violated the Establishment Clause because the funeral that she had refused to attend took place at a church and involved a religious service. In due course, Mr. McMahon and the County moved for summary judgment, and the district court granted the motion. Because the district court correctly determined that the guarantees of the Establishment Clause were not violated by the actions of the defendants, we now affirm the judgment of the district court.

**Thomas Harris v. Brian Schaller** No. 19-3124

Submitted December 7, 2020 — Decided December 9, 2020

Case Type: Prisoner

Western District of Wisconsin. No. 15-cv-397-wmc — **William M. Conley**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

**ORDER**

Thomas Harris, an inmate at Green Bay Correctional Institution in Wisconsin, seeks to appeal the dismissal of claims that arose in 2007 and 2013. The district court ruled that his 2007 claims were untimely and the 2013 claims unexhausted. It entered judgment on September 25, 2018. Thirty-four days later, Harris moved for reconsideration. A year later, on September 19, 2019, the court denied that motion as untimely under Rule 59(e) of the Federal Rules of Civil Procedure, and meritless under Rule 60. More than 30 days after this post-judgment ruling, Harris mailed a notice of appeal to contest both the judgment and post-judgment ruling. Because the notice is untimely, we lack jurisdiction to review both decisions and dismiss this appeal.

**Scherita L. Deloney v. Andrew M. Saul** No. 20-1418

Argued November 17, 2020 — Decided December 10, 2020

Case Type: Civil

Northern District of Indiana, Hammond Division. No. 2:18-cv-352 PPS SLC — **Philip P. Simon**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

**ORDER**

Scherita Deloney applied for Disability Insurance Benefits, asserting that she was unable to work because of arthritis in both knees, among other impairments. An administrative law judge concluded that, although Deloney could no longer perform her past work, she was not disabled because she still could perform some sedentary work with restrictions. The district court upheld this decision. Because Deloney waived one of her arguments and substantial evidence supports the ALJ's decision, we affirm.

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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](#).