

Opinions for the week of February 1 – February 5, 2021

Albert Richardson, Jr. v. USA No. 20-1915

Submitted January 27, 2021 — Decided February 1, 2021

Case Type: Prisoner

Southern District of Illinois. No. 92-cr-30116-SMY — **Staci M. Yandle**, *Judge*.

Before MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Albert Richardson appeals the district court's order denying his petition for a writ of *coram nobis*... Richardson filed a petition for a writ of error *coram nobis* with the district court that presided over his 1992 conviction, arguing that sentencing errors in that case led to an undue sentence enhancement for his current conviction... Even so, Richardson is not entitled to relief. A writ of *coram nobis* is "to be used only in extraordinary cases" where it is necessary "to achieve justice..." He mounts no meaningful challenge to his 1992 conviction; he challenges only the lawfulness of the resulting sentence. An error in a defendant's sentence is not so "fundamental" as to render the conviction itself "invalid..." **AFFIRMED**

Laura Ann Harris-Patterson v. Andrew Saul No. 20-1805

Argued January 26, 2021 — Decided February 1, 2021

Case Type: Civil

Western District of Wisconsin. No. 19-cv-487-bbc — **Barbara B. Crabb**, *Judge*.

Before DIANE S. SYKES, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; THOMAS L. KIRSCH II, *Circuit Judge*.

ORDER

An administrative law judge denied Laura Harris-Patterson's application for disability benefits, and a district judge affirmed that decision. 2020 U.S. Dist. LEXIS 64149 (W.D. Wis. Apr. 13, 2020). On appeal to this court, Harris-Patterson has dropped most of the arguments presented to the ALJ and the district court... In this court Harris-Patterson emphasizes one argument that the district judge did not mention: she contends that the ALJ made a mistake of fact by finding that Harris-Patterson needed bathroom breaks 10 to 15 times a *calendar* day, when Harris-Patterson testified that she needed 10 to 15 in a *working* day... We examine the record and the ALJ's decision as a whole. Harris-Patterson's request to treat the meaning of "day" as a mistake of fact that requires the entire administrative process to start anew does not carry the day. We agree with the district judge that substantial evidence supports the agency's decision... **AFFIRMED**

Cesar Martinez-Baez v. Monty Wilkinson No. 20-1078

Argued September 15, 2020 — Decided February 1, 2021

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A200-778-427

Before FLAUM, ROVNER, and WOOD, *Circuit Judges*.

WOOD, *Circuit Judge*. Cesar Martinez-Baez has been fighting to remain in the United States ever since April 5, 2011, when he first received notice of removal proceedings from the immigration authorities. Martinez-Baez concedes that he is removable, but he maintains that he is entitled to be considered for discretionary cancellation of removal under section 240A of the Immigration and Nationality Act (INA), 8 U.S.C. § 1229b(b). The immigration judge did not see matters that way, finding instead that Martinez-Baez had not established either of the legal prerequisites for cancellation: 10 years of continuous

presence or exceptional and extremely unusual hardship to a U.S. citizen relative. The Board of Immigration Appeals affirmed, and Martinez-Baez has now petitioned this court for review. We conclude that the Board was too quick to deny relief. The IJ erred procedurally by failing to resolve whether Martinez-Baez's testimony about the most important fact in this case—his date of entry—was credible. In addition, the IJ and Board mischaracterized the evidence pertaining to the asserted hardship. We therefore grant the petition and remand for further proceedings.

RBD Property, LLC v. City of Berwyn No. 20-1018

Argued December 16, 2020 — Decided February 1, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:19-cv-05700 — **Charles P. Kocoras**, *Judge*.

Before DIANE P. WOOD, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

This case arose when the City of Berwyn allowed a local business to demolish residential homes that the company owned and to construct a private parking lot on the cleared space. Nearby property owner RDB Properties and its member-manager David Miklos ("RDB plaintiffs") sued the City, alleging that it had violated their Fifth Amendment rights by effecting an illegal taking. The district court granted the City's motion to dismiss for failure to state a claim. We too conclude that the complaint failed to state any type of takings claim and thus affirm.

USA v. Dexter Fisher No. 20-2754

Submitted January 11, 2021 — Decided February 2, 2021

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 15-cr-00157 — **Jane Magnus-Stinson**, *Chief Judge*.

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

ORDER

Dexter Fisher, a federal prisoner, sought a sentence reduction under the First Step Act of 2018, 18 U.S.C. § 3582(c)(1)(A)(i). The district court denied him relief. Because the district court did not abuse its discretion, we affirm.

Rebecca Woodring v. Jackson County, Indiana No. 20-1881

Argued November 12, 2020 — Decided February 2, 2021

Case Type: Civil

Southern District of Indiana, New Albany Division. No. 4:18-cv-00243 — **Tanya Walton Pratt**, *Judge*.

Before WOOD, HAMILTON, and ST. EVE, *Circuit Judges*.

HAMILTON, *Circuit Judge*, dissenting.

ST. EVE, *Circuit Judge*. This case concerns the constitutionality of a nativity scene on government property. Each holiday season, Jackson County, Indiana allows private groups to set up a lighted Christmas display on the front lawn of its historic courthouse. The display comprises a nativity scene, Santa Claus in his sleigh, a reindeer, carolers, and large candy-striped poles. Rebecca Woodring, a resident of Jackson County, sued the County to enjoin the nativity scene. In her view, the nativity scene violates the First Amendment's Establishment Clause because it conveys the County's endorsement of a religious message. The County defends the nativity scene as part of its secular celebration of a public

holiday. The district court sided with Woodring and permanently enjoined the County from displaying the nativity scene, at least in its current arrangement. The County now appeals. We agree with the district court that Woodring has standing to sue, but we hold that the County's nativity scene complies with the Establishment Clause... We thus affirm the district court's ruling on standing, reverse its Establishment Clause ruling, and vacate the injunction.

Cheryl Kemplen v. Andrew Saul No. 20-1651

Argued December 15, 2020 — Decided February 2, 2021

Case Type: Civil

Southern District of Illinois. No. 19-cv-549-DGW — **Donald G. Wilkerson**, *Magistrate Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Cheryl Kemplen challenges the denial of her application for Social Security disability benefits. She suffers from degenerative disc disease and osteoarthritis which limit her ability to use her hands for reaching, handling, and fingering. An administrative law judge found her not disabled, determining that she could engage in those activities frequently. In reaching that decision, the ALJ gave significant weight to a state agency consultant's opinion from early 2016. Kemplen asserts on appeal that her condition deteriorated after the consultant's opinion, and that the ALJ should have ordered the consultant to review new evidence. We agree with Kemplen and remand for further agency proceedings.

USA v. Jonathan Stephens No. 20-1463

Argued December 15, 2020 — Decided February 2, 2021

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:18-CR-00044-1 — **Ronald A. Guzman**, *Judge*.

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

HAMILTON, *Circuit Judge*. Appellant Jonathan Stephens pleaded guilty to transporting child pornography in violation of 18 U.S.C. § 2252A(a)(1). The district court sentenced him to 151 months in prison, at the bottom of the applicable Sentencing Guideline range. On appeal, Stephens challenges his sentence. He contends that the district court improperly disregarded the probation officer's recommendation of a below-guideline sentence, his own primary arguments in mitigation, and the statutory sentencing factors set forth in 18 U.S.C. § 3553(a). We affirm.

Ronda L. Stocks v. Andrew M. Saul No. 19-3298

Argued November 18, 2020 — Decided February 2, 2021

Case Type: Civil

Southern District of Indiana, New Albany Division. No. 4:18-cv-00125-DML-SEB — **Debra McVicker Lynch**, *Magistrate Judge*.

Before DIANE S. SYKES, *Chief Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

Ronda Stocks applied for disability insurance benefits, mainly alleging post-traumatic stress disorder, depression, and anxiety. An administrative law judge assigned "little weight" to her treating psychologist's opinion and denied her application. The district court upheld this decision. We conclude, however, that the ALJ did not "minimally articulate" good reasons for his decision not to give Stocks's treating

physician's opinion controlling weight. We therefore vacate the judgment and remand for further proceedings.

Joshua Cheli v. Taylorville Community School District No. 20-2033

Submitted December 10, 2020 — Decided February 3, 2021

Case Type: Civil

Central District of Illinois. No. 19-cv-03085 — **Sue E. Myerscough**, *Judge*.

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

FLAUM, *Circuit Judge*. Taylorville Community School District #3 (the "District") terminated plaintiff Joshua Cheli. A collective bargaining agreement between the District and its employees provided, among other things, that an "employee may be ... discharged for reasonable cause." Cheli sued the District and others for violating his procedural due process rights under the Fourteenth Amendment. The district court dismissed his case because it found that he lacked a protected property interest in his continued employment. We disagree. The collective bargaining agreement established that Cheli could not be terminated except "for reasonable cause," which created a protected property interest for which he was entitled to due process. We accordingly reverse the district court.

Christina Lyons v. William Morris, Jr. No. 20-1491

Submitted November 2, 2020 — Decided February 3, 2021

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:20-cv-00265-TWP-MJD — **Tanya Walton Pratt**, *Judge*.

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

ORDER

Christina Lyons appeals the dismissal for lack of subject-matter jurisdiction of her suit against her former counsel, William R. Morris, and his employer, Indiana Legal Services, Incorporated. Lyons alleged neither a federal claim nor one that gives rise to diversity jurisdiction, and so we affirm.

Jeffrey Cutchin v. Stephen Robertson No. 20-1437

Argued September 22, 2020 — Decided February 3, 2021

Case Type: Civil

Southern District of Indiana, Evansville Division. No. 3:18-cv-00028-TWP-MPB — **Tanya Walton Pratt**, *Judge*.

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

ROVNER, *Circuit Judge*. Jeffrey Cutchin's wife and daughter were killed in an automobile accident that occurred when another driver, Sylvia Watson, ran a red light and struck their vehicle. Cutchin, as the representative of their estates, alleges that Watson's driving ability was impaired as the result of medications she had been prescribed, among them an opioid... After the providers and their malpractice insurer agreed to a settlement of \$250,000, the maximum amount for which they can be held individually liable under the Indiana Medical Malpractice Act (the "MMA" or "Act"), Cutchin sought further relief from the Indiana Patient's Compensation Fund (the "Fund"), which acts as an excess insurer. The Fund argued that the MMA does not apply to Cutchin's claim and that he is barred from seeking excess damages from the Fund. The district court agreed, resulting in this appeal. Because existing Indiana case law does not supply sufficient guidance on two questions that are crucial to the resolution of this appeal,

we certify these questions to the Indiana Supreme Court, pursuant to Circuit Rule 52 and Indiana Appellate Rule 64.

USA v. Larry Collins No. 20-1198

Argued December 15, 2020 — Decided February 3, 2021

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:15-CR-00379-3— **Gary Feinerman**, *Judge*.
Before KANNE, HAMILTON, and BRENNAN, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Larry Collins was charged in 2014 with participating in a heroin distribution ring. He pleaded guilty to two charges and was sentenced to 180 months in prison, the statutory mandatory minimum for those offenses. In this direct appeal, Collins seeks to withdraw his guilty plea because, he says, at sentencing the government breached the plea agreement by failing to tell the court that he cooperated with its investigation. Collins did not raise this argument in the district court, so we review it under the demanding “plain error” standard. We affirm.

Timothy A. Delong v. Andrew M. Saul No. 19-3259

Argued October 6, 2020 — Decided February 3, 2021

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:18-cv-02709-DLP-SEB — **Doris L. Pryor**,
Magistrate Judge.

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

ORDER

Timothy Delong seeks Social Security disability benefits based on a host of physical and mental impairments, including memory loss and cognitive decline. An administrative law judge denied his application, concluding that Delong had exaggerated his cognitive disabilities and that, despite his impairments, he could perform light work with some limitations. The district court affirmed. On appeal, Delong contends that the ALJ erred by crediting a medical expert over an examining psychologist, and by failing to account for his limitations in concentration, persistence, and pace. We find, however, that the ALJ made no reversible procedural mis-steps and that her decision was supported by substantial evidence. We therefore affirm.

USA v. Samy Hamzeh No. 19-3072

Argued October 1, 2020 — Decided February 3, 2021

Case Type: Criminal

Eastern District Wisconsin. No. 16-cr-21-pp — **Pamela Pepper**, *Chief Judge*.
Before EASTERBROOK, MANION, and ROVNER, *Circuit Judges*.

MANION, *Circuit Judge*. Samy Mohammed Hamzeh was charged with illegal possession of two machineguns and a silencer, in violation of 26 U.S.C. § 5861(d). Before trial, he raised an entrapment defense, arguing he was induced by government informants and lacked the predisposition to obtain these weapons. In four pretrial orders, the district court excluded many of his recorded statements and evidence of the availability of parts that could be used to assemble machineguns. The day before trial was scheduled to begin, the Government filed this interlocutory appeal, pursuant to 18 U.S.C. § 3731. Because we find the court abused its discretion through the commission of legal errors in considering the evidence, we reverse and remand for further proceedings.

USA v. Anthony Morgan No. 19-2737

Argued September 30, 2020 — Decided February 3, 2021

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 18 CR 158 — **Charles R. Norgle**, *Judge*.
Before SYKES, *Chief Judge*, and WOOD and BRENNAN, *Circuit Judges*.

WOOD, *Circuit Judge*. Anthony Morgan pleaded guilty to conspiring to receive seven firearms from out of state without the necessary licenses, in violation of 18 U.S.C. § 371. The district court imposed a 48-month sentence and various conditions of supervised release. Morgan raises several challenges to his sentence, but we find merit in only one. He contends that the district court failed to justify supervised-release condition 23 with reference to the sentencing criteria in 18 U.S.C. § 3553, and that it did not explain why this condition had to be added to the rest of the discretionary conditions. We agree with him and thus order a remand limited to this point.

USA v. James Triplett No. 19-2685

Submitted December 15, 2020 — Decided February 3, 2021

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:15-CR-00379-2 — **Gary Feinerman**, *Judge*.
Before MICHAEL S. KANNE, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Appellant James Triplett and others were charged in 2014 with operating a heroin-distribution enterprise. He pleaded guilty and was sentenced to 240 months in prison. Triplett has appealed. His appointed counsel, however, asserts that all potential arguments are frivolous and moves to withdraw. See *Anders v. California*, 386 U.S. 738, 744 (1967). We agree with counsel and therefore grant his motion and dismiss the appeal.

Eric White v. United Airlines Inc. No. 19-2546

Argued September 21, 2020 — Decided February 3, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 19 C 114 — **Charles R. Norgle**, *Judge*.
Before WOOD, BRENNAN, and SCUDDER, *Circuit Judges*.

WOOD, *Circuit Judge*. In 1994, Congress passed the Uniformed Services Employee and Reemployment Rights Act (USERRA) with the goal of prohibiting civilian employers from discriminating against employees because of their military service. 38 U.S.C. § 4301(a). At issue in this case is a matter of first impression in the courts of appeals: whether USERRA's mandate that military leave be accorded the same "rights and benefits" as comparable, nonmilitary leave requires an employer to provide paid military leave to the same extent that it provides paid leave for other absences, such as jury duty and sick leave. The district court answered that question in the negative and dismissed the suit. We read the statute differently. We find that paid leave falls within the set of "rights and benefits" defined by the statute, and so we reverse and remand for further proceedings.

Maria Gracia v. SigmaTron International, Inc. No. 19-1526

Argued September 16, 2020 — Decided February 3, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:16-cv-7297 — **John Z. Lee**, *Judge*.

Before EASTERBROOK, MANION, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Thirteen years ago, Maria Gracia's former employer SigmaTron International, Inc. fired her after she filed a sexual harassment and hostile work environment complaint with the Equal Employment Opportunity Commission. Gracia's fortunes improved when she prevailed in a 2014 trial against SigmaTron on a Title VII retaliation claim and found new work at a different company. This appeal stems from SigmaTron's decision in 2015 to describe Gracia's earlier litigation against the company in public filings with the Securities and Exchange Commission. Gracia responded to SigmaTron's SEC disclosures with a second lawsuit advancing a new Title VII retaliation claim, along with claims for retaliation under the Illinois Human Rights Act, defamation, and invasion of privacy. The district court dismissed Gracia's defamation and false light invasion of privacy claims, and later granted SigmaTron's motion for summary judgment on the Title VII and Illinois Human Rights Act claims. We conclude that Gracia failed at summary judgment to present the district court with specific facts to show any injury in fact... As for Gracia's state law claims, while she pleaded enough to clear the Article III standing hurdle, the district court was right to conclude that the allegations failed to state a claim on which relief could be granted... we VACATE the district court's judgment on Gracia's retaliation claims and REMAND with instructions to dismiss for lack of standing. We AFFIRM the district court's dismissal of Gracia's state law claims.

USA v. Terry Brown No. 20-2547

Submitted February 5, 2021 — Decided February 5, 2021

Case Type: Criminal

Northern District of Indiana, Hammond Division. No. 2:18-cr-00021-TLS-APR-6 — **Theresa L.**

Springmann, *Judge*.

Before DIANE P. WOOD, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Terry Brown, an inmate at the Federal Correctional Institution in Milan, Michigan, asked the district court—but not the Bureau of Prisons—for compassionate release in light of the COVID-19 pandemic. See 18U.S.C. §3582(c)(1)(A). The district court denied the motion, finding that Brown, who had not alleged any existing health problems, did not demonstrate extraordinary and compelling circumstances justifying release. But the government raised, and Brown did not refute, the argument that he failed to exhaust his administrative remedies, so we affirm on that ground instead.

USA v. Patrick Shanklin No. 20-1277

Submitted February 5, 2021 — Decided February 5, 2021

Case Type: Criminal

Southern District of Indiana, Terre Haute Division. No. 2:19-cr-00012-JRS-CMM-01 — **James R.**

Sweeney II, *Judge*.

Before DIANE P. WOOD, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Patrick Shanklin pleaded guilty to possession with the intent to distribute 500 grams or more of methamphetamine, 21 U.S.C. § 841(a)(1). After determining that Shanklin qualified for the safety-valve provision under 18 U.S.C. § 3553(f), the district court sentenced him within the guidelines to 99 months' imprisonment and 5 years' supervised release. Shanklin now appeals. His appointed counsel asserts that

his appeal is frivolous and seeks to withdraw. See *Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the nature of the case and addresses potential issues that an appeal of this kind would be expected to involve. Because her analysis appears thorough, and Shanklin did not respond to her motion, see CIR. R. 51(b), we limit our review to the subjects that counsel discusses. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014)... We GRANT counsel's motion to withdraw and DISMISS the appeal.

Joshua Young v. City of Chicago No. 19-3534

Argued December 4, 2020 — Decided February 5, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17-C-4803 — **Elaine E. Bucklo**, Judge.

Before KANNE, WOOD, and SCUDDER, *Circuit Judges*.

KANNE, *Circuit Judge*. Plaintiff Joshua Young sued the City of Chicago and several of its police officers for detaining him without probable cause while he awaited trial for being an armed habitual criminal. Describing this case decides the outcome, to wit: Chicago police officers lawfully stopped Young while he was driving. A gun was found next to Young in the car. And Young is a convicted felon. That's textbook probable cause. It does not matter that Young said the gun wasn't his—protesting innocence is not a get-out-of-pretrial-detention-free card. Nor does it matter that the police allegedly falsified evidence at the station later on—they had all the probable cause they needed from the arrest scene alone. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Young's pretrial detention fell squarely within that exception. We thus affirm the district court's decision granting summary judgment to Defendants.

Estate of Christopher J. Davis v. Juan Ortiz No. 19-3355

Argued September 21, 2020 — Decided February 5, 2021

Case Type: Civil

Eastern District of Wisconsin. No. 18-CV-1846-JPS — **J.P. Stadtmueller**, Judge.

Before WOOD, BRENNAN, and SCUDDER, *Circuit Judges*.

WOOD, *Circuit Judge*. Deputy Juan Ortiz shot Christopher Davis in the head on February 24, 2016, during a drug bust that went awry. Arguing that Ortiz unreasonably seized Davis in violation of the Fourth Amendment, Davis's Estate sued Ortiz for money damages under 42 U.S.C. § 1983. Ortiz responded with an assertion of qualified immunity, but the district court rejected it, holding that disputes of material fact on which immunity depended had to be resolved by the trier of fact. Ortiz has appealed from the denial of qualified immunity. But our appellate jurisdiction is secure only if the relevant material facts are undisputed or (what amounts to the same thing) when the defendant accepts the plaintiff's version of the facts as true for now. See *Johnson v. Jones*, 515 U.S. 304 (1995). Neither condition is present here, and so we must dismiss Ortiz's appeal for want of jurisdiction.

Larry Howell v. Wexford Health Sources, Inc. No. 19-3210

Argued October 2, 2020 — Decided February 5, 2021

Case Type: Prisoner

Southern District of Illinois. No. 3:16-CV-00160-RJD — **Reona J. Daly**, Magistrate Judge.

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

HAMILTON, *Circuit Judge*. Plaintiff Larry Howell injured his knee while playing basketball in the Menard Correctional Center... Five months later, he had surgery to repair the torn meniscus. It was another twenty months later, however, before Howell had surgery to reconstruct his ACL... While his requests for the ACL surgery were still being rejected, Howell filed this suit under 42 U.S.C. § 1983 alleging violations of his Eighth Amendment right to be free from cruel and unusual punishment. Howell's claims for delaying the ACL surgery were tried to a jury, which ruled in favor of defendant Dr. John Trost but against defendant Wexford Health Sources, Inc. The district court later vacated the portion of the jury verdict against Wexford. The court entered judgment as a matter of law in favor of Wexford, as well as judgment for Dr. Trost based on the jury verdict. On appeal, Howell challenges only the portion of the judgment in favor of Wexford. He argues that the district court erred by excluding his evidence of other incarcerated people's delayed orthopedic care and erred both procedurally and substantively in granting Wexford's motion for judgment as a matter of law. We affirm.

Rufus Brooks v. SAC Wireless, LLC No. 19-2953

Argued December 16, 2020 — Decided February 5, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18 C 03472 — **Edmond E. Chang**, *Judge*.

Before DIANE P. WOOD, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Rufus Brooks sued SAC Wireless, LLC, asserting that it had discriminated against him in its hiring practices. SAC moved to dismiss the case with prejudice based on Brooks's behavior during two days of depositions. After an evidentiary hearing, the district court granted SAC's motion. Brooks, who represented himself, attempted to appeal by emailing a notice of appeal to the district judge and mailing it, late, to the district court clerk's office. Because Brooks's notice of appeal was untimely, we dismiss his appeal for lack of jurisdiction.

Dallas McIntosh v. Wexford Health Sources, Inc. No. 19-1095

Argued September 29, 2020 — Decided February 5, 2021

Case Type: Prisoner

Southern District of Illinois. No. 3:17-cv-103 — **J. Phil Gilbert**, *Judge*.

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

SCUDDER, *Circuit Judge*. The Prison Litigation Reform Act requires a prisoner to exhaust administrative remedies before challenging his conditions of confinement in federal court. As we recognized in *Pavey v. Conley*, sometimes a dispute arises over whether a prisoner satisfied this exhaustion requirement, and resolving the question requires holding a hearing, finding facts, and making credibility determinations. All of that happened here, with a magistrate judge holding a hearing and determining that Dallas McIntosh exhausted remedies available to him within the St. Clair County Jail in southern Illinois. But the district court then rejected the magistrate judge's recommended finding, and it did so without itself holding a new hearing upon which to base its own credibility determinations. That was error in the circumstances present here, where witness credibility weighed heavily in the exhaustion-of-remedies inquiry. We remand for a hearing in the district court.

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](#).