

Opinions for the week of February 22 - February 26, 2016

Charles Williams v. Melinda Mannlein No. 15-3239

Submitted February 22, 2016* — Decided February 22, 2016

Case Type: Civil

Central District of Illinois. No. 15-1123 — **James E. Shadid**, *Chief Judge*.

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

ORDER

Charles Williams, a resident of Peoria, Illinois, complained to Animal Protection Services, a county agency, after a neighbor's dog chased him down the street. APS cited the neighbor for keeping a "nuisance" animal, and an assistant state's attorney was assigned to prosecute the citation (a civil matter that the Illinois courts characterize as "quasi-criminal," *see, e.g., City of Rockford v. Custer*, 936 N.E.2d 773, 774–75 (Ill. App. Ct. 2010)). The neighbor was acquitted at a bench trial, but six months later the dog again chased Williams, leading to another citation and prosecution. This time the neighbor pleaded guilty and was fined. Williams then filed this action... This appeal is frivolous. We order Williams to show cause within 14 days why the court should not impose sanctions under Federal Rule of Appellate Procedure 38 for filing a frivolous appeal. If Williams fails to pay any fine imposed as a sanction, he may be barred from filing any other litigation in this circuit until he has done so. *See Support Sys. Int'l., Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995). AFFIRMED.

Aleksander Skarzynski v. Central Intelligence Agency No. 15-3184

Submitted February 22, 2016 — Decided February 22, 2016

Case Type: Civil

Northern District of Indiana, Hammond Division. No. 2:15cv41 — **William C. Lee**, *Judge*.

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

ORDER

Aleksander Skarzynski sued the Central Intelligence Agency alleging that it had tasked an uneducated and inexperienced officer with planning the raid on Osama bin Laden's hideout in 2011, and that the officer's errors endangered the country's national security and almost cost the lives of the members of the Navy SEALs team that carried out the raid. For relief, he requested that the CIA revise its hiring policies to ensure that only "appropriately qualified people" who meet "society expectations for diversity" are hired. The CIA moved to dismiss the case and 21 days later Skarzynski moved to add a claim under the False Claims Act, 31 U.S.C. §§ 3729–3733, alleging that the agency had deceived the public regarding certain aspects of the raid. A magistrate judge denied the request to amend his complaint under Federal Rule of Civil Procedure 15(a)(2) because amendment would be futile. Skarzynski then requested a 2½-hour hearing before the district court so he could discuss "publically [sic] available documents pertinent to [his] case" and present legal arguments "previously undisclosed" in his earlier filings. The district court denied Skarzynski's request for a hearing and then dismissed the case, explaining that the claim—nothing more than an expression of Skarzynski's opinion regarding the raid—was insubstantial and therefore failed to invoke the court's subject-matter jurisdiction. It also concluded that Skarzynski lacked standing because he failed to allege a concrete or particularized injury... This appeal is frivolous. We order Skarzynski to show cause within 14 days why the court should not impose sanctions under Federal Rule of Appellate Procedure 38 for filing a frivolous appeal. If Skarzynski fails to pay any fine imposed as a sanction, he may be barred from filing any other litigation in this circuit until he has done so. *See Support Sys. Int'l., Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995). AFFIRMED

USA v. Bobby Harris No. 15-3020

Submitted February 22, 2016* — Decided February 22, 2016

Case Type: Criminal

Northern District of Illinois, Western Division. No. 05 CR 50082-7 — **Philip G. Reinhard**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Bobby Harris appeals from the denial of his motion under 18 U.S.C. § 3582(c)(2) for a sentence reduction based on the retroactive application of Amendment 782 to the federal sentencing guidelines. We affirm.

Laura Jennings v. City of Indianapolis No. 15-2852

Submitted February 22, 2016* — Decided February 22, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:15-cv-00333-LJM-MJD — **Larry J. McKinney**, *Judge*.

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

ORDER

Laura Jennings filed suit against the City of Indianapolis and the Indianapolis Fire Department, alleging retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, in connection with prior employment-discrimination suits she filed against these defendants. In this suit, instead of asserting any adverse action related to her employment, she raised confusing allegations about the guardianship of her deceased brother, as well as taxes and insurance related to his death. The district court dismissed the complaint because these allegations failed to state an employment-discrimination claim... Finally, Jennings has been a vexatious litigant. We now order Jennings to show cause within 14 days why the court should not impose sanctions under Federal Rule of Appellate Procedure 38 for filing a frivolous appeal. Possible sanctions include revocation of Jennings's IFP status, a fine, and an order under *Support Sys. Int'l., Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995), barring Jennings from filing any other litigation in this circuit until she has paid all the fees she owes to the district courts in this circuit and to us. AFFIRMED.

USA v. Lashone Owens No. 15-2719

Submitted February 22, 2016* — Decided February 22, 2016

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:09 CR 00089-001 — **Larry J. McKinney**, *District Judge*.

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

ORDER

Lashone Owens appeals the denial of his motion under 18 U.S.C. § 3582(c)(2) for a sentence reduction based on Amendment 782 to the Sentencing Guidelines, which retroactively lowered the base offense level for most drug crimes. See U.S.S.G. § 1B1.10(d); *id.* Supp. to App. C., amends. 782, 788 (2014). The district court denied the motion on the ground that a binding plea agreement, not the guidelines range, established Owens's sentence, and thus he is ineligible for a reduction. See FED. R. CRIM. P. 11(c)(1)(C). We affirm the denial of the motion.

Kathy Stark v. Carolyn Colvin No. 15-2352

Argued December 16, 2015 — Decided February 22, 2016

Case Type: Civil

Northern District of Indiana, Fort Wayne Division. No. 14-cv-00108 — **Joseph S. Van Bokkelen**, *Judge*.
Before MANION, KANNE, and WILLIAMS, *Circuit Judges*.

MANION, *Circuit Judge*. Kathy Stark, aged 60, applied for disability insurance benefits, primarily asserting that she is disabled by degenerative disc disease that causes severe back, neck, and hip pain. The ALJ denied her application largely on the basis that she did not testify credibly about the severity of her pain. We agree with Stark that the credibility analysis was flawed and remand the case to the agency for further proceedings.

Ankush Sehgal v. Loretta Lynch No. 15-2334

Argued December 15, 2015 — Decided February 22, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 8576 — **John Robert Blakey**, *Judge*.
Before BAUER, POSNER, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. This appeal arises from an unusual immigration case that was filed properly in the district court. Plaintiffs Mohit and Ankush Sehgal filed an “I-130” petition seeking lawful permanent resident status for Mohit, who is a citizen of India, as the husband of Ankush, who is a citizen of the United States. Immigration authorities denied their petition on the ground that Mohit had tried years earlier to gain lawful residence in the United States by a fraudulent marriage to another woman. That made him ineligible for relief even though his marriage to Ankush is legitimate. See 8 U.S.C. § 1154(c). The decision to grant or deny an I-130 petition is not a matter of agency discretion, and Mohit is not subject to a removal order. The proper means to challenge the denial is therefore a suit in the district court under the Administrative Procedure Act, 5 U.S.C. §§ 702 & 703. See *Ogbolumani v. Napolitano*, 557 F.3d 729, 733 (7th Cir. 2009); *Ruiz v. Mukasey*, 552 F.3d 269, 274-76 (7th Cir. 2009). The Seghals sued under the APA. The district court found that substantial evidence supported the agency’s finding of marriage fraud and thus granted summary judgment against the Seghals. We affirm. Although the agency’s handling of this case has involved procedural errors that are difficult to understand, the bottom-line decision was legally sound. Substantial evidence, including Mohit’s own written admission, supports the agency’s finding that Mohit’s earlier marriage was fraudulent, so the denial of Ankush’s I-130 petition on his behalf was correct.

USA v. Gerard Liles No. 15-2214

Submitted February 22, 2016* — Decided February 22, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 13 CR 860-1 **Ronald A. Guzmán**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Gerard Liles pleaded guilty to distributing crack cocaine, 21 U.S.C. § 841(a)(1), after he sold both powder cocaine and crack cocaine to an informant. He was sentenced to 105 months’ imprisonment and four years’ supervised release. Liles appeals his sentence arguing, in part, that the district court failed to justify his term and conditions of supervised release in light of the 18 U.S.C. § 3553(a) factors. The government concedes that a full resentencing is necessary because of this error. We agree and vacate and remand.

USA v. Charles Robinson, IV No. 15-2091

Submitted January 19, 2016 — Decided February 22, 2016

Case Type: Criminal

Central District of Illinois. No. 97 CR 30025 — **Richard Mills**, *Judge*.

Before POSNER, EASTERBROOK, and SYKES, *Circuit Judges*.

POSNER, *Circuit Judge*. In 1997 the defendant was indicted for possessing cocaine and cocaine base with the intent to distribute (count 1), distributing cocaine base (count 2), and possessing just cocaine base with intent to distribute (count 3), all in violation of 21 U.S.C. § 841(a)(1). A jury convicted the defendant on all three counts, and in 1998 the district court sentenced him to consecutive prison sentences of 40 years on counts 1 and 3 and 20 years on count 2, for a total of 100 years—effectively a life sentence, which we upheld in *United States v. Robinson*, 250 F.3d 527 (7th Cir. 2001), following earlier decisions in the case, cited in *id.* at 528–29. Thirteen years later the Sentencing Commission promulgated Amendment 782 to the guidelines, which retroactively reduced the base offense level for the defendant’s crimes from 43 to 42. The effect was to change the recommended guidelines sentence from life to 30 years to life. The defendant accordingly moved the district court to reduce his sentence, and the judge did, imposing 30 years on counts 1 and 3 and 20 years on count 2, with all three sentences to run consecutively, making the total sentence 80 years... What Amendment 782 would not have allowed the judge to do would have been to reconsider any feature of the original sentence that he had imposed other than its length, such as whether the defendant qualified as a career offender. *United States v. Wren*, 706 F.3d 861 (7th Cir. 2013). But the change in the applicable guideline provision empowered the judge to invoke U.S.S.G. § 5G1.2(c) and make the three sentences concurrent rather than consecutive. Unfortunately, but not irrevocably, the defendant’s lawyer had misinformed the judge that the three sentences had to run consecutively. In fact they could be made concurrent; and if so, since the longest sentence was 30 years, that would be the defendant’s total sentence. The judgment must therefore be vacated and the case remanded to enable the judge to decide whether to alter the defendant’s sentence. The defendant, who has been pro se in this appeal, would undoubtedly benefit from assistance of counsel on remand. Although the Criminal Justice Act does not authorize the appointment and compensation of a lawyer for the defendant in a proceeding based on a retroactive change in the applicable guidelines, *United States v. Foster*, 706 F.3d 887 (7th Cir. 2013), district judges can if they want try to recruit pro bono counsel, who donate their time rather than selling their services to the judiciary, to represent an indigent defendant. We urge the district judge to consider doing so in this case. REVERSED AND REMANDED

Wasiu I. Alade v. Underwriters Laboratories, Inc. No. 15-1964

Submitted February 22, 2016* — Decided February 22, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 9215 — **Robert W. Gettleman**, *Judge*.

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

ORDER

Wasiu Alade appeals the grant of summary judgment for his former employer, Underwriters Laboratories, in this suit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a), and 42 U.S.C. § 1981, asserting that he was fired because of his race (black) and national origin (Nigerian). We affirm.

USA v. Kyle W. Miller No. 15-3183

Submitted February 22, 2016 — Decided February 23, 2016

Case Type: Criminal

Southern District of Illinois. No. 4:14-CR-40088-SMY — **Staci M. Yandle**, *Judge*.

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

ORDER

Kyle Miller pleaded guilty in 2014 to stealing bank funds in violation of 18 U.S.C. § 656 and was sentenced to time served plus 5 years’ supervised release. One year into his term of supervision, the

government sought revocation, see 18 U.S.C. § 3583(e), (g), alleging that Miller had violated the conditions of his release by using (and thus possessing) alcohol and illegal drugs, being late with monthly supervision reports, lying to his probation officer, and failing to make restitution payments. After Miller admitted the allegations, the district court revoked his supervised release and imposed 4 months' reimprisonment to be followed by another 48 months' supervised release. Miller waived oral pronouncement of the conditions of that release and also acknowledged that he did not object to the wording of the conditions as proposed in advance by the probation officer. Miller filed a notice of appeal, but his appointed attorney asserts that the appeal is frivolous and seeks to withdraw under *Anders v. California*, 386 U.S. 738, 744 (1967)... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

USA v. LeShawn Stanbridge No. 15-2686

Argued January 26, 2016 — Decided February 23, 2016

Case Type: Criminal

Central District of Illinois. No. 14-cr-30020-SEM-TSH-1 — **Sue E. Myerscough**, *Judge*.

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

BAUER, *Circuit Judge*. LeShawn Stanbridge appeals his conviction for possession of methamphetamine with intent to distribute, 21 U.S.C. § 841(a)(1). The drugs had been found in Stanbridge's car after police in Quincy, Illinois, detained him on the ground that he committed a traffic offense by not signaling continuously for 100 feet before pulling alongside the curb to park. That understanding of Illinois law was wrong, but the district court decided that the mistake was reasonable and, for that reason, denied Stanbridge's motion to suppress the drugs. We hold that the mistake of law was *not* reasonable, and thus Stanbridge's motion to suppress should have been granted... Stanbridge fully complied with § 11-804. Officer Bangert's contrary belief was not objectively reasonable, and thus the officer's mistake of law cannot justify Stanbridge's seizure. Accordingly, the denial of the defendant's motion to suppress must be overturned. The judgment of conviction is VACATED, and the case is REMANDED to the district court for further proceedings.

DJL Farm LLC v. EPA Nos. 15-2245, 15-2246, 15-2247 & 15-2248

Submitted February 5, 2016 — Decided February 23, 2016

Case Type: Agency

Environmental Protection Agency

Before BAUER, FLAUM, and SYKES, *Circuit Judges*.

PER CURIAM. Petitioners DJL Farm LLC, Andrew H. Leinberger Family Trust, and William and Sharon Critchelow are landowners who challenge permits authorizing FutureGen Industrial Alliance to construct and operate wells to store carbon dioxide near their land. Shortly before argument, FutureGen determined that it did not have enough money to develop the wells authorized by the permits and, with the EPA, moved to dismiss the consolidated petitions as moot. After hearing from both sides, we conclude that because the four permits expired on February 2, 2016, they are no longer in force and petitioners lack any concrete interest in challenging them. We therefore dismiss as moot the petitions for review.

Jovan Daniels v. Saleh Obaisi No. 15-1724

Submitted February 22, 2016* — Decided February 23, 2016

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 1:14-cv-01654 — **James F. Holderman**, *Judge*.

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

ORDER

Jovan Daniels, an Illinois inmate, suffered an asthma attack. In his suit under 42 U.S.C. § 1983, Daniels accuses a prison nurse, Aletha Harper, of ignoring it. (Daniels also sued a prison doctor, but he no longer pursues that claim). The district court granted Harper's motion for summary judgment. Because no evidence suggests that Harper was aware that Daniels had an urgent, serious medical need, we affirm.

USA v. Christopher Seals No. 15-1372

Argued December 9, 2015 — Decided February 23, 2016

Case Type: Criminal

Northern District of Indiana, Fort Wayne Division. No. 13-cr-46 — **Hon. Theresa L. Springmann**, *Judge*. Before EASTERBROOK and HAMILTON, *Circuit Judges*, and PALLMEYER, *District Judge*.

PALLMEYER, *District Judge*. Three armed men robbed a bank in Fort Wayne, Indiana on Valentine's Day 2013. A jury determined that Christopher Seals was one of those men, convicting him in September 2014 of armed bank robbery, brandishing a firearm during a crime of violence, and possession of a firearm after a felony conviction. The district court sentenced Seals to 272 months in prison. On appeal, Seals argues that his conviction should be reversed because the government introduced improper propensity evidence. He also argues that his sentence should be vacated due to the district court's allegedly erroneous application of two different sentencing enhancements. We affirm Seals' conviction, but vacate his sentence, and remand for resentencing.

Yury Paryev V. v. Loretta E. Lynch No. 14-3565

Argued October 6, 2015 — Decided February 23, 2015

Case Type: Agency

Board of Immigration Appeals. No. A089-856-987

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

ORDER

In August 2009, the Department of Homeland Security commenced removal proceedings against Yury Paryev, a Russian citizen, following the expiration of Paryev's visa. Paryev applied for adjustment of status based on his marriage to a U.S. citizen. However, an immigration judge ("IJ") determined that Paryev's criminal history outweighed the positive equities of his marriage and steady job and denied his request. The Board of Immigration Appeals ("Board") upheld the IJ's denial and declined to remand the case. Paryev moved to reopen the removal proceedings, again based on the birth of his sons, but the Board denied this motion on the ground that he failed to produce any new evidence. Paryev now petitions for review of the Board's denial of his motion to reopen. Because he does not present any meritorious constitutional or legal contentions, we deny the petition. To the extent that Paryev challenges the Board's exercise of discretion in declining to remand, we dismiss the petition for lack of jurisdiction.

Abduwali Muse v. Charles A. Daniels No. 15-2646

Submitted February 22, 2016* — Decided February 24, 2016

Case Type: Prisoner

Southern District of Indiana, Terre Haute Division. No. 2:15-cv-00213-JMS-DKL — **Jane E. Magnus-Stinson**, *Judge*.

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

Order

Abduwali Muse pleaded guilty to piracy, 18 U.S.C. §2280, among other crimes, for his role in boarding the *MV Maersk Alabama* in 2009 in international waters off the coast of Somalia and taking its captain hostage. Muse initially told federal agents that he was 16 at the time of his capture, which created a potential for prosecution under the special rules applicable to juveniles. See 18 U.S.C. §§ 5031–42. The day before a hearing set to determine his age, Muse told an FBI agent that he was between 18 and 19. At the hearing Muse refused to testify. Magistrate Judge Peck, of the Southern District of New York, concluded that Muse was at least 18 when the crime occurred, which led to his prosecution as an adult. He pleaded guilty and was sentenced to 405 months' imprisonment. The plea agreement contains a clause promising "not to seek to withdraw his guilty plea or file a direct appeal or any kind of collateral attack challenging his guilty plea or conviction based on his age either at the time of the charged conduct or at the time of the guilty plea."... Muse's brief in this court ignores his waiver and §2255(e) alike. Instead he presents an argument about the extent to which 28 U.S.C. §636(b)(1)(A) permits magistrate judges to resolve contests about criminal defendants' ages. The brief thus gives us no reason to question the district court's decision. **AFFIRMED**

USA v. Yihao Pu No. 15-1180

Argued May 26, 2015 — Decided February 24, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division No. 11 CR 00699 — **Charles R. Norgle**, *Judge*.
Before BAUER, KANNE, and WILLIAMS, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. Yihao Pu worked for two companies, "Company A" and Citadel, which are financial institutions that traded stocks and other assets on behalf of clients. While working at each company, Pu copied computer files from his employer's system to personal storage devices. The files were part of each company's proprietary software that allowed them to execute strategic trades at high speeds. The files were company trade secrets, and Pu's copying of the files was a significant data breach. Normally, crimes involving the theft of computer data trade secrets lead to the sale of the data to, or the thief being hired by, a company that will use the data. But here, Pu used the data to conduct computerized stock market trades for himself and lost approximately \$40,000. Pu was indicted and pleaded guilty to one count of unlawful possession of a trade secret belonging to Company A, and one count of unlawful transmission of a trade secret belonging to Citadel. The district court sentenced him to 36 months in prison and ordered him to pay over \$750,000 in restitution. Pu appeals, arguing that the district court's factual findings did not support its conclusion that Pu intended to cause a loss to the companies of approximately \$12 million. We agree. Pu also challenges the district court's failure to require the government to provide a complete accounting of the loss caused by his offense before it determined the amount of restitution owed. We also agree that the district court erred by awarding restitution without evidence that reflected a complete accounting of the victims' investigation costs.

Kirk Homoky v. Jeremy Ogden No. 14-3788

Argued September 16, 2015 — Decided February 24, 2016

Case Type: Civil

Northern District of Indiana, Hammond Division No. 12 CV 491 — **Theresa L. Springmann**, *Judge*.
Before POSNER, EASTERBROOK, and WILLIAMS, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. Police Officer Kirk Homoky was under investigation by the Hobart Police Department for officer misconduct. As part of the investigation, he was ordered to submit to a voice stress test, a type of lie detector test, and if he did not he would be subject to dismissal. Homoky refused to sign a release form because his participation was not voluntary, and he was charged with insubordination and placed on administrative leave. He claims that by forcing him to sign the release form under threat of dismissal, he was giving up his right against self-incrimination in violation of the Constitution. We disagree. The department informed him that any statement made would not be used against him in a criminal proceeding, so it was free to compel him to answer any question, even incriminating ones. For

the first time on appeal, Homoky also asserts a stigma-plus due process claim. Because it was not presented to the district court, Homoky waived this argument, and we will not review its merits.

Steven Baer v. Loretta Lynch No. 15-3040

Submitted February 22, 2016*— Decided February 25, 2016

Case Type: Civil

Western District of Wisconsin. No. 15-cv-460-wmc — **William M. Conley**, *Chief Judge*.

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

ORDER

Steven Baer appeals the dismissal of his suit claiming that the federal and Wisconsin prohibitions on the possession of a firearm by a felon violate both the federal and state constitutions. Because Baer's federal claims are foreclosed by our precedent and the district court did not abuse its discretion by declining to address Baer's state-law claim, we affirm the judgment but modify it to reflect that the dismissal of the state-law claim is without prejudice.

Ryan Allensworth v. Carolyn W. Colvin No. 15-2053

Argued January 26, 2016 — Decided February 25, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 1162 — **Elaine E. Bucklo**, *Judge*.

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

POSNER, *Circuit Judge*. The plaintiff applied to the Social Security Administration for disability benefits and was turned down by the administrative law judge who heard his case. He appealed to the district court, which affirmed, and now appeals to us... Apart from the fact that the vocational expert did not explain where he got the job numbers (2700, 2250, 1800) from— we doubt that they are reliable statistics but will not press the issue—we have no idea how many jobs exist in the regional economy that the plaintiff's manifold disabilities would not prevent him from doing. But the question is academic, since even if his physical disabilities were properly accounted for, he does not appear to be capable of *any* full-time gainful employment, given his hypersomnia. The judgment of the district court is therefore REVERSED, with instructions to REMAND the case to the Social Security Administration for further proceedings consistent with this opinion.

Vandaire Knox v. Robert Shearing No. 14-3520

Submitted February 22, 2016* — Decided February 25, 2016

Case Type: Prisoner

Southern District of Illinois. No. 3:14-cv-0193-MJR-SCW — **Michael J. Reagan**, *Chief Judge*.

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

ORDER

VanDaire Knox, an Illinois prisoner at Menard Correctional Center, sued several officials and medical professionals at the prison under 42 U.S.C. § 1983 alleging that they ignored his long-standing knee pain. Knox filed a motion for a preliminary injunction asking the district court to order the defendants to prescribe an opioid pain medication for him. The court denied the motion. Knox has appealed that ruling, as permitted by 28 U.S.C. § 1292(a)(1). For the following reasons, we affirm.

USA v. Jonus Wheeler No. 15-2785

Submitted January 7, 2016 — Decided February 26, 2016

Case Type: Criminal

Southern District of Illinois. No. 3:06-CR-30073-SMY — **Staci M. Yandle**, *Judge*.
Before RIPPLE, WILLIAMS, and HAMILTON, *Circuit Judges*.

PER CURIAM. Appellant Jonus Wheeler pled guilty in 2006 to possessing a firearm as a felon, see 18 U.S.C. § 922(g)(1), and was sentenced to 108 months in prison followed by 36 months of supervised release. Ten months after he was re-leased from prison and began serving the term of supervision, the government sought revocation, see 18 U.S.C. § 3583(e) and (g), alleging that Wheeler had tested positive for (and thus possessed) marijuana four times, missed nine drug-treatment sessions, and twice failed to submit a monthly supervision report. After Wheeler admitted the allegations, the district court revoked his supervised release and imposed 21 months of reimprisonment to be followed by another 12 months of supervised release. Wheeler filed a notice of appeal, but his appointed attorney asserts that the appeal is frivolous and seeks to withdraw under *Anders v. California*, 386 U.S. 738 (1967)... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

Jose Hernandez v. Thomas Dart No. 15-2493

Argued January 13, 2016 — Decided February 26, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 1236 — **James B. Zagel**, *Judge*.
Before WOOD, *Chief Judge*, and BAUER and HAMILTON, *Circuit Judges*.

BAUER, *Circuit Judge*. Plaintiff-appellant, Jose Hernandez, a disabled prisoner, sued Defendants-appellees, Sheriff Thomas J. Dart and Cook County (collectively "Defendants"), under 42 U.S.C. § 1983 for excessive force and deliberate indifference to his medical needs. These two claims stemmed from his treatment while he was a pre-trial detainee in the custody of the Cook County Department of Corrections ("CCDOC"). The district court granted summary judgment in favor of Defendants, holding that Hernandez failed to exhaust his administrative remedies, as the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires. We hold that Hernandez did indeed exhaust his remedies and remand the case so that its merits may be heard.

USA v. Jaime Orozco-Sanchez No. 15-1252

Argued December 8, 2015 — Decided February 26, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 13 CR 128 — **Virginia M. Kendall**, *Judge*.
Before WOOD, *Chief Judge*, and BAUER and WILLIAMS, *Circuit Judges*.

BAUER, *Circuit Judge*. Defendant-appellant, Jaime Orozco-Sanchez, pleaded guilty to one count of possessing with intent to distribute 500 or more grams of a substance containing cocaine, in violation of 21 U.S.C. § 841(a)(1). The district court sentenced him to seventy-five months of imprisonment, as well as four years of supervised release. The court ordered that Orozco-Sanchez serve the seventy-five-month prison sentence consecutive to a separate forty-one-month prison sentence from an earlier case for illegal reentry into the United States in violation of 8 U.S.C. § 1326(a) and 6 U.S.C. § 202(4). Orozco-Sanchez now appeals his sentence, arguing that the district court erred in three ways. First, it did not properly consider the 18 U.S.C. § 3553(a) mitigation factors as 18 U.S.C. § 3584(b) requires. Second, it used the 2013 United States Sentencing Commission Guidelines Manual ("Sentencing Guidelines") instead of the 2014 Sentencing Guidelines, which led the district court to refuse to classify Orozco-Sanchez's earlier offense as "relevant conduct" to the present offense. Orozco-Sanchez argues that these first two errors caused the district court to impermissibly impose a consecutive rather than a concurrent sentence. Finally, Orozco-Sanchez argues that the district court erred by imposing certain

written conditions of supervised release that were not orally pronounced from the bench. We disagree with Orozco-Sanchez's first two arguments, but agree with the third. Accordingly, we vacate the sentence and remand for a full resentencing.

Lamar Blake v. USA No. 15-1239

Argued January 27, 2016 — Decided February 26, 2016

Case Type: Prisoner

Northern District of Illinois, Western Division. No. 14 CV 50117 — **Philip G. Reinhard**, *Judge*.
Before POSNER, KANNE, and HAMILTON, *Circuit Judges*.

PER CURIAM. Lamar Blake pled guilty to possessing cocaine base with intent to distribute and possessing a firearm as a felon. See 18 U.S.C. § 922(g); 21 U.S.C. § 841(a)(1). Blake did not appeal, but he later filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. The district court held an evidentiary hearing on one of Blake's claims—that he had received ineffective assistance of counsel when his attorney failed to file a requested notice of appeal. After the hearing, the district court denied Blake's § 2255 motion but certified the ineffective-assistance claim for appeal. Because the district court's finding that Blake did not ask his attorney to file an appeal is not clearly erroneous, we affirm.

NLRB v. Contemporary Cars, Inc. Nos. 14-3723 & 15-1187

Argued September 24, 2015 — February 26, 2016

Case Type: Agency

National Labor Relations Board

Nos. 12-CA-026126, 12-CA-026233, 12-CA-026306, 12-CA-026354, 12-CA-026386 & 12-CA-026552
Before MANION, ROVNER, and HAMILTON, *Circuit Judges*.
MANION, *Circuit Judge*, concurring in part and dissenting in part.

HAMILTON, *Circuit Judge*. This case involves a car dealership and its parent company's efforts to frustrate their employees' rights to organize. An administrative law judge found that the petitioner-employers engaged in a series of unfair labor practices aimed at coercing their employees' choices in the run-up to a December 2008 union election and frustrating their employees' protected concerted activities after the election. The judge also found that petitioners fired an employee due to anti-union animus and after the election unlawfully made multiple changes to employees' working conditions without bargaining with the union. The National Labor Relations Board largely affirmed the judge's order. It adopted the judge's findings of fact and all but one conclusion of law, and it expanded one remedy the judge ordered. The employers have petitioned for judicial review. The Board has cross-petitioned for enforcement of its order. Having reviewed the extensive record of the numerous charges in this case, we deny the employers' petition and enforce the Board's order in its entirety.

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](#).