

## Opinions for the weeks of January 4 - January 8, 2015

### **Michael Thompson v. William Holm** No. 15-1928

Submitted December 4, 2015— Decided January 4, 2016

Case Type: Prisoner

Eastern District of Wisconsin. No. 13-CV-930 — **Nancy Joseph**, *Magistrate Judge*.

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

ROVNER, Circuit Judge. Michael Thompson, a Muslim inmate incarcerated at Waupun Correctional Institution in Wisconsin, sued members of the prison staff for violating his right under the First Amendment to exercise his religion freely. The violation occurred, Thompson says, when for two days prison staff prevented him from fasting properly during Ramadan. The district court granted the defendants' motion for summary judgment. Because Thompson presented evidence from which a jury could reasonably find that the defendants violated his free exercise rights, we vacate the judgment and remand for further proceedings.

### **August Bogina, III v. Medline Industries, Inc.** No. 15-1867

Argued December 10, 2015 — Decided January 4, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 11 C 5373 — **John J. Tharp, Jr.**, *Judge*.

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

POSNER, Circuit Judge. This appeal is from the dismissal of a suit filed in 2011 under the False Claims Act, 31 U.S.C. §§ 3729 et seq., by a private individual named Bogina on behalf of the United States. He seeks a bounty for exposing fraud that the defendants, Medline Industries and the Tutera Group (and Tutera affiliates unnecessary to discuss), have allegedly perpetrated against both the federal government, see 31 U.S.C. § 3730, and several state governments on whose behalf Bogina is also suing (they are the "et al." in the caption). He bases federal jurisdiction of the state claims on the supplemental jurisdiction of the federal courts. See 31 U.S.C. § 3732(b); 28 U.S.C. § 1367. The district judge dismissed the federal claims as being too similar to those in a prior suit against Medline to authorize Bogina's suit. The judge then relinquished jurisdiction over the state claims to the state courts, see 28 U.S.C. § 1367(c); about those claims we need say no more... AFFIRMED.

### **EEOC v. AutoZone, Inc.** No. 15-1753

Argued September 30, 2015 — Decided January 4, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 2:12-cv-00303-WEC — **William E. Callahan, Jr.**, *Magistrate Judge*.

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

BAUER, Circuit Judge. Plaintiff-appellant, the Equal Employment Opportunity Commission ("EEOC"), filed suit against defendant-appellee, AutoZone, Incorporated ("AutoZone"), for dismissing Margaret Zych ("Zych") from AutoZone's Cudahy, Wisconsin, location in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA"). Specifically, the EEOC alleged that AutoZone failed to accommodate Zych's lifting restriction and that Zych's termination constituted discrimination on account of her disability. After a five-day trial, the jury returned a verdict in favor of AutoZone, finding that Zych was not a qualified individual with a disability or a record of disability. The EEOC filed a motion for a new trial, which the district court denied. The EEOC appealed. For the reasons that follow, we affirm the district court.

### **USA v. Iaad Hamad** No. 14-3813

Argued September 30, 2015 — Decided January 4, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:10-cr-01038-1 — **Amy J. St. Eve**, *Judge*.

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

ROVNER, Circuit Judge. Cook County Department of Revenue agents entered Iaad Hamad's convenience store pursuant to an ordinance that allowed them to inspect cigarette inventory. The agents found cigarettes without the appropriate tax stamps, and also discovered a handgun and narcotics. Hamad was convicted of one count of possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). He appeals the district court's denial of his motion to suppress the firearm and the incriminating statement he gave regarding the firearm. We affirm.

**USA v. J.B. Brown** No. 14-3652

Argued November 12, 2015 — Decided January 4, 2016

Case Type: Criminal

Central District of Illinois, Urbana Division. No. 14-CR-20007 — **Colin S. Bruce**, *Judge*.

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

FLAUM, Circuit Judge. During jury selection for defendant J.B. Brown's trial, the government used a peremptory strike to remove one of the two African American members of the venire. Brown objected under *Batson v. Kentucky*, 476 U.S. 79 (1986), and the government proffered a race-neutral justification for the strike. The district court found that the government's justification was sincere and rejected Brown's *Batson* challenge. Following trial, the jury found Brown guilty. On appeal, Brown argues that the district court improperly rejected his *Batson* challenge. Accordingly, he claims that he is entitled to a reversal of his conviction. We disagree and affirm the judgment of the district court.

**Benard McKinley v. Kim Butler** No. 14-1944

Argued October 30, 2015 — Decided January 4, 2016

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 11 C 4190 — **John J. Tharp, Jr.**, *Judge*.

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

RIPPLE, *Circuit Judge*, dissenting.

POSNER, Circuit Judge. In 2001, a 16-year-old named Benard McKinley shot and killed a 23-year-old man, Abdo Serna-Ibarra, as he tried to enter a Chicago park. Both were with friends, and one of McKinley's friends, a 15-year-old named Edward Chavera, may have handed McKinley the gun. Whether or not he did, he told McKinley to shoot Serna-Ibarra. McKinley obeyed, shooting him in the back, and when Serna-Ibarra turned around with his hands raised McKinley shot him again, killing him. Tried in an Illinois state court and convicted by a jury of first-degree murder, McKinley was sentenced to consecutive 50-year prison terms, one for the murder and one for the use of a firearm to commit it... With no good-time credit or other chance of early release permitted to persons sentenced for first-degree murder in Illinois, McKinley will be imprisoned for the full 100 years unless, of course, he dies before the age of 116... His accomplice, Chavera, pleaded guilty to second-degree murder and was sentenced to 17.5 years in prison. After unsuccessfully seeking post-conviction relief in the Illinois court system, McKinley petitioned the federal district court in Chicago for a writ of habeas corpus, on the ground (so far as relates to the present appeal) that his sentence violated the federal Constitution. See 28 U.S.C. § 2254(a). The district court denied McKinley's petition, precipitating the appeal now before us. To be allowed to press his claim in this court, however, he had to have pressed it in the state judicial system first, § 2254(b)(1)(A), and have made clear that it was indeed a federal constitutional claim that he was pressing... We... vacate the judgment of the district court and remand the case to that court with instructions to stay further consideration of McKinley's habeas corpus claim pending his filing of a successive post-conviction petition in state court seeking resentencing on the basis of Miller and the

concerns expressed in this opinion regarding the sentencing proceeding that resulted in a 100-year prison sentence for a 16-year-old. SO ORDERED.

**USA v. Lance Slizewski** No. 15-2397

Argued December 16, 2015 — Decided January 5, 2016

Case Type: Criminal

Western District of Wisconsin. No. 14-cr-87 — **James D. Peterson**, *Judge*.

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

KANNE, Circuit Judge. Lance Slizewski pleaded guilty to possessing a firearm as a felon after police in Madison, Wisconsin, executed a warrant to search his rental car and found a gun in the trunk. Slizewski moved to suppress the gun. He argued that a detective misrepresented and omitted critical information in his search-warrant affidavit, necessitating a Franks hearing to determine the search's validity. The district court denied the motion, and Slizewski pleaded guilty but reserved his right to challenge the denial of his motion. Because the district court permissibly ruled that any misstatements or omissions were unintentional or immaterial, we affirm the district court's judgment.

**Tracy Williams v. Brandon Brooks** No. 15-1763

Argued December 4, 2015 — Decided January 5, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:13-CV-1592 — **Jane E. Magnus-Stinson**, *Judge*.

Before POSNER, FLAUM, and WILLIAMS, *Circuit Judges*.

FLAUM, Circuit Judge. Defendant Officer Brandon Brooks conducted a traffic stop of plaintiff Tracy Williams for failing to activate his turn signal prior to changing lanes. Williams did not cooperate with the instructions of Officer Brooks and Defendant Officer Kehl, which led to a physical confrontation. Defendant Sergeant Shannon Trump then arrived at the scene. Officer Brooks arrested Williams for resisting law enforcement, and after a bench trial, a state court judge granted Williams's motion to dismiss the charge. Williams sued defendants in federal district court pursuant to 42 U.S.C. § 1983, alleging false arrest, excessive force, and failure to protect in violation of the Fourth Amendment. The district court granted defendants' motion for summary judgment. We affirm.

**USA v. Frank Plada** No. 14-3803

Argued December 15, 2015 — Decided January 5, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 13 CR 410 — **Harry D. Leinenweber**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; RICHARD A. POSNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

**ORDER**

Frank Plada pleaded guilty to bank robbery, see 18 U.S.C. § 2113(a), and was sentenced within the guidelines range to 151 months' imprisonment and three years of supervised release. We agree with the parties that a remand for full resentencing is necessary because the district court failed to explain the need for supervised release. Plada also claims that the district court committed procedural errors when determining his sentence and that the sentence is unreasonable... We VACATE Plada's sentence and REMAND for resentencing consistent with this order.

**USA v. Matthew Poulin** No. 14-2458

Argued December 4, 2015 — Decided January 5, 2016

Case Type: Criminal

Central District of Illinois, Rock Island Division. No. 11-CR-40116 — **Michael M. Mihm**, *Judge*.  
Before POSNER, FLAUM, and WILLIAMS, *Circuit Judges*.

FLAUM, Circuit Judge. In 2013, the district court sentenced Matthew Poulin to two concurrent 115-month terms of imprisonment followed by concurrent life terms of supervised release after he pled guilty to receipt and possession of child pornography. Poulin appealed his prison and supervised re-lease terms as well as four special conditions of his supervised release. We held that the district court erred by not addressing a principal argument in mitigation and by not providing rea-sons for imposing the maximum term of supervised release. We also determined that the record lacked necessary reasoning for us to review the validity of the special conditions. We therefore vacated Poulin’s prison and supervised release terms, as well as the special conditions accompanying his supervised release, and remanded for resentencing. On remand, the district court resentenced Poulin to con-current 84-month terms of imprisonment on both counts of conviction, followed by a 10-year term of supervised release. The district court imposed thirteen standard conditions of supervision and seven special conditions. Poulin now brings a successive appeal challenging various conditions of his super-vised release. For the reasons that follow, we vacate the disputed conditions and remand to the district court for resentencing in conformance with our recent jurisprudence, which encourages the imposition of supervised-release conditions that are “properly-noticed, supported by adequate findings, and well-tailored to serve the purposes of deterrence, rehabilitation, and protection of the public.” *United States v. Kappes*, 782 F.3d 828, 835–36 (7th Cir. 2015); see also *United States v. Armour*, 804 F.3d 859 (7th Cir. 2015); *United States v. Thompson*, 777 F.3d 368 (7th Cir. 2015). We do this recognizing that the district court did not have the benefit of guidance provided by the above-cited cases.

**Daniel Banakus v. United Continental Holdings** No. Nos. 15-1836 & 15-1845

Argued October 1, 2015 — Decided January 6, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. Nos. 13-cv-01509 & 12-cv-06244 — **John Z. Lee**, *Judge*.  
Before POSNER, MANION, and HAMILTON, *Circuit Judges*.  
HAMILTON, *Circuit Judge*, concurring.

MANION, Circuit Judge. Following its merger with Continental Airlines in 2010, United Airlines has made a number of changes—not all of them welcome—to its frequent-flier rewards program. We previously addressed the fallout in *Lagen v. United Continental Holdings, Inc.*, 774 F.3d 1124 (7th Cir. 2014), where a member of United’s MileagePlus rewards program claimed that United breached a contract by reducing his anticipated program benefits. While by no means commending United’s decision to disappoint its most loyal customers, we concluded that the abridgement of benefits was not a breach of contract because the Program Rules allowed United to change the benefits at any time. As in *Lagen*, the plaintiffs in this case responded to United’s modification of their anticipated MileagePlus benefits by suing United for breach of contract. And relying on *Lagen*, the district court granted summary judgment to United, finding that the Program Rules authorized United to amend the program benefits at will. On appeal, the plaintiffs insist that their case is different from *Lagen*, and that this time the Program Rules do not give United the upper hand. But the principal difference between this case and *Lagen* does not help the plaintiffs, as we shall see, nor do the remaining differences suffice to establish a breach of contract. In view of our holding in *Lagen*, and because the undisputed evidence demonstrates that United was authorized to modify its rewards-program benefits at any time, we affirm the district court’s entry of summary judgment for United.

**John Dawkins v. USA** No. 15-3667

Submitted December 2, 2015 — Decided January 7, 2016

Case Type: Original Proceeding

Northern District of Illinois, Eastern Division, to Entertain a Second or Successive Motion for Collateral Review — **John W. Darrah**, *Judge*.  
Before POSNER, FLAUM, and RIPPLE, *Circuit Judges*.  
RIPPLE, Circuit Judge, *dissenting*.

PER CURIAM. John Dawkins pleaded guilty to armed robbery of a bank and was sentenced, as a career offender, to serve 262 months in prison. He wants to attack his sentence in a suit under 28 U.S.C. §§ 2244(b) and 2255(h). He relies on *Johnson v. United States*, 135 S. Ct. 2551 (2015), which holds that the residual clause of the Armed Career Criminal Act is unconstitutionally vague... we deny authorization and dismiss Dawkins' application.

**Benedict Nichols v. State of Wisconsin** Nos. 15-3029 & 15-3030

Submitted January 7, 2016 — Decided January 7, 2016

Case Type: Civil

Eastern District of Wisconsin. Nos. 15-CV-1069 & 15-CV-1070 — **William E. Duffin**, *Magistrate Judge*.  
Before KENNETH F. RIPPLE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

**ORDER**

Benedict Nichols appeals from the dismissal of his civil complaints for failure to state a claim. We dismiss the appeal.

**USA v. Adam Williams, Jr.** No. 15-2940

Submitted January 7, 2016 — Decided January 7, 2016

Case Type: Criminal

Northern District of Indiana. No. 2:01-CR-67 — **Rudy Lozano**, *Judge*.  
Before KENNETH F. RIPPLE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

**ORDER**

Adam Williams appeals from an order granting him only a partial reduction in his sentence under 18 U.S.C. § 3582(c)(2) after Amendment 782 to the Sentencing Guidelines retroactively reduced the guidelines range applicable to his crime. Because the district court did not abuse its discretion in declining to grant him an even greater reduction, we affirm.

**USA v. Kevin Brown** No. 15-2231

Submitted January 7, 2016 — Decided January 7, 2016

Case Type: Criminal

Southern District of Illinois. No. 14-40098-001 — **J. Phil Gilbert**, *Judge*.  
Before KENNETH F. RIPPLE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

**ORDER**

Over a two-year period Kevin Brown collected pseudoephedrine in order to cook methamphetamine. Brown pleaded guilty to conspiring to manufacture methamphetamine and was sentenced as a career offender, see U.S.S.G. § 4B1.1, to 188 months' imprisonment and 4 years' supervised release. He appeals, but his appointed lawyer contends that the appeal is frivolous and seeks to withdraw... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

**Terry Whitney v. DOD** No. 15-1465

Submitted December 22, 2015 — Decided January 7, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:14-cv-01598-RLY-TAB — **Richard L. Young**, *Chief Judge*.

Before DIANE P. WOOD, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*.

**ORDER**

Terry Whitney, a former Accounting Technician at the United States Department of Defense, appeals the district court's dismissal of his employment-discrimination suit... AFFIRMED.

**USA v. Jose Arias-Rodriguez** No. 15-1200

Submitted January 7, 2016 — Decided January 7, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 12 CR 605 — **Amy J. St. Eve**, *Judge*.

Before KENNETH F. RIPPLE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

**ORDER**

José Arias-Rodriguez was charged with two counts of being in the United States without authorization after removal. See 8 U.S.C. § 1326(a). He testified at trial that he is not Mexican citizen Arias-Rodriguez but instead is a Puerto Rican citizen named Marco Antonio Rodriguez (the name on his Illinois driver's license). The jury disbelieved his testimony and returned guilty verdicts on both counts, and the district court sentenced the defendant to a total of 130 months' imprisonment. Arias-Rodriguez has filed a notice of appeal, but his appointed attorney contends that the appeal is frivolous and seeks to withdraw... counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

**Tao Chen v. Loretta E. Lynch** No. 15-1831

Argued November 4, 2015 — Decided January 8, 2016

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A099-890-056

Before KANNE, ROVNER and SYKES, *Circuit Judges*.

KANNE, *Circuit Judge*. Tao Chen, a 39-year-old Chinese citizen, petitions for review of a decision by the Board of Immigration Appeals ("Board"), which upheld Immigration Judge ("IJ") Robert D. Vinikoor's denial of Chen's application for asylum and withholding of removal. The IJ ruled Chen's testimony insufficiently credible and corroborated, and he alternatively found Chen did not demonstrate a well-founded fear of persecution on account of a political opinion. We deny Chen's petition for review on all grounds.

**Frederick Grede v. Bank of New York** No. 15-1039

Argued November 10, 2015 — Decided January 8, 2016

Case Type: Bankruptcy from District Court

Northern District of Illinois, Eastern Division. No. 08 C 2582 — **James B. Zagel**, *Judge*.

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

POSNER, *Circuit Judge*. The plaintiff in this case, now in its eighth year, is the trustee of a bankrupt firm named Sentinel Management Group, Inc. Sentinel was what is called a cash management firm: it

invested cash, which had been lent it by persons or firms, in liquid low-risk securities. It also traded on its own account, using money borrowed from Bank of New York Mellon Corp. and Bank of New York (affiliates usually referred to jointly as BNYM) to finance the trades. BNYM required that its loans be secured by its borrowers, of whom Sentinel was one. Not owning enough assets to provide the required security, however, Sentinel pledged securities that it had bought for its customers with their money even though its loans from BNYM were used for trading on its own account—improperly. Federal law (7 U.S.C. §§ 6d(a)(2), 6d(b)), as well as the contracts between Sentinel and its customers, required the securities to be held in segregated accounts, that is, accounts separated from Sentinel's own assets. Sentinel was forbidden to pledge the assets in the segregated accounts to BNYM as security for BNYM's loans to it... The judgment of the district court is affirmed in part and reversed in part, and the case remanded for further proceedings consistent with this decision.

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](#).