

Opinions for the week of January 6 – January 10, 2020

Dale Drinkwater v. Charles Larson No. 19-1876

Argued December 17, 2019 — Decided January 6, 2020

Case Type: Civil

Western District of Wisconsin. No. 16-cv-134-wmc — **William M. Conley**, *Judge*.

Before KENNETH F. RIPPLE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Dale Drinkwater, a former Wisconsin prisoner, has a history of bilateral hip arthroplasty and chronic hip pain. While he was incarcerated, prison doctors disagreed over his need for surgery on one hip and denied his requests for outside consultations. After he was released, he sued six prison medical professionals for deliberate indifference toward his need for hip surgery. The district court granted the defendants' motion for summary judgment. On appeal Drinkwater pursues his deliberate- indifference claims against only two prison doctors—Drs. David Burnett and Charles Larson. Because Drinkwater has not adduced evidence for a reasonable jury to find that either was indifferent to his serious medical needs, we affirm the district court's judgment.

Marina Kolchinsky v. Western Dairy Transport, LLC No. 19-1739

Argued December 17, 2019 — Decided January 6, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 C 10544 — **Matthew F. Kennelly**, *Judge*.

Before KENNETH F. RIPPLE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

After Marina Kolchinsky and her mother, Lidia Kolchinsky, were severely injured in a car collision with a tractor-trailer in Illinois, they sued the truck driver and the two companies that contracted with him. They filed in federal court based on diversity of citizenship; Illinois law controlled. The district court entered partial summary judgment in favor of Western Dairy Transport, LLC, and WD Logistics, LLC, concluding that the driver was an independent contractor so the Kolchinskys could not hold the companies responsible for the driver's alleged negligence. Because the district court properly classified the driver as an independent contractor, we affirm the summary judgment for the companies.

Kelvin Lett v. City of Chicago No. 19-1463

Argued December 4, 2019 — Decided January 6, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-4993 — **John Robert Blakey**, *Judge*.

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

BARRETT, *Circuit Judge*. Kelvin Lett was an investigator in the Chicago municipal office that reviews allegations of police misconduct. In that role, Lett helped prepare an investigative report about a police shooting. Lett's supervisor directed him to write in the report that police officers had planted a gun on the victim of the shooting, but Lett did not believe that the evidence supported that finding and refused. After he faced disciplinary consequences as a result, Lett sued his supervisors and the City of Chicago for retaliating against him in violation of the First Amendment. The district court dismissed all of Lett's claims, and Lett now appeals, insisting that his refusal to alter the report constitutes protected citizen speech. But as the district court recognized, *Davis v. City of Chicago*, 889 F.3d 842 (7th Cir. 2018), squarely forecloses this argument. Because Lett spoke pursuant to his official duties and not as a private citizen

when he refused to alter the report, the First Amendment does not apply... The district court properly dismissed Lett's claims against his supervisors and the City of Chicago, and we AFFIRM its judgment.

USA v. Ricky Clark No. 19-1354

Argued December 17, 2019 — Decided January 6, 2020

Case Type: Criminal

Southern District of Indiana. No. 1:16CR00219-001 — **Jane Magnus-Stinson**, *Chief Judge*.

Before KENNETH F. RIPPLE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Ricky Clark was charged with multiple counts related to possession of child pornography and coercion, enticement, and sexual exploitation of three minor victims. He moved to suppress evidence obtained during an interview at his home after he asked for an attorney but then indicated that he was "willing to talk" to detectives. Clark argued that the encounter was custodial, so his statements and the other evidence obtained after he requested counsel must be excluded. The district court concluded that the interrogation was not custodial and denied the motion. Clark pleaded guilty, reserving the right to appeal the suppression ruling. We affirm.

Hosea Word v. City of Chicago No. 19-1320

Argued December 4, 2019 — Decided January 6, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-00141 — **Sharon Johnson Coleman**, *Judge*.

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

FLAUM, *Circuit Judge*. Plaintiff Hosea Word is a sergeant and aspiring lieutenant in the Chicago Police Department (CPD). Having just missed out on a promotion following the 2006 lieutenants' examination, Word missed the cut again after receiving a lower-ranking score on the 2015 examination. Word alleges that high-ranking members of CPD leadership connived to sneak early test content to their "wives and paramours" prior to the 2015 exam, resulting in those romantic partners acing the test and receiving promotions. The district court dismissed Word's constitutional due process and equal protection claims, as well as his breach of contract claims. Illinois and federal caselaw squarely preclude Word's case. We affirm.

USA v. Charles Sharpe, Jr. No. 19-2448

Submitted January 7, 2020 — Decided January 7, 2020

Case Type: Criminal

Southern District of Illinois. No. 4:18-CR-40040-SMY-1 — **Staci M. Yandle**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Charles Sharpe, Jr. pleaded guilty to one count of production of child pornography, 18 U.S.C. § 2251(a) and (e), and was sentenced to 282 months' imprisonment to be followed by five years' supervision. Sharpe seeks to appeal his judgment and sentence, but his lawyer asserts that the appeal is frivolous and asks permission to withdraw from representation. See *Anders v. California*, 386 U.S. 738 (1967). Sharpe has not responded to this motion. See CIR. R. 51(b). Counsel's brief explains the nature of the case and addresses potential issues that this kind of appeal might involve. The analysis in counsel's brief appears thorough, so we limit our review to the subjects she discusses... We GRANT counsel's motion to withdraw and DISMISS the appeal.

USA v. Alex Guerrero No. 19-1676

Argued November 5, 2019 — Decided January 7, 2020

Case Type: Criminal

Northern District of Indiana, Hammond Division. No. 2:10-cr-00109-TLS-APR-22 — **Theresa L.**

Springmann, *Chief Judge*.

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

HAMILTON, *Circuit Judge*. Since 2015, defendant-appellant Alex Guerrero has sought a reduction of his prison sentence under Amendment 782 to the United States Sentencing Guidelines, which reduced guideline ranges for drug quantities. Despite some procedural complications, we agree with Guerrero that he is entitled to and has not yet received one opportunity for full consideration of the merits of his request. Accordingly, we vacate the decision of the district court and remand so that he may properly present such a motion, the merits of which are for the sound discretion of the district court.

USA v. Randall Springen No. 19-1205

Submitted January 7, 2020 — Decided January 7, 2020

Case Type: Criminal

Western District of Wisconsin. No. 03-cr-135-bbc-1 — **Barbara B. Crabb**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Randall Springen was convicted of, and served a prison sentence for, distribution of cocaine in violation of 21 U.S.C. § 841(a)(1). While on supervised release, he tested positive for cocaine and failed to report to his probation officer. Although Springen challenged the reliability of the drug tests, the district court ruled that the tests were sufficiently trustworthy and found that Springen violated the terms of his supervision. The court revoked Springen's supervised release and sentenced him to five months' imprisonment without any further supervised release. Springen filed a notice of appeal, but his appointed lawyer argues that this appeal is frivolous as moot—Springen's sentence ended on June 28, 2019—and seeks to withdraw under *Anders v. California*, 386 U.S. 738, 744 (1967). Springen has not responded to counsel's motion... We GRANT counsel's motion to withdraw and DISMISS the appeal as moot.

USA v. Ruben Mancillas No. 19-1151

Submitted January 7, 2020 — Decided January 7, 2020

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:16CR00020-001 — **William T. Lawrence**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

This is Ruben Mancillas's second appeal. In 2017, he was convicted of two counts of possessing ammunition as a felon in violation of 18 U.S.C. § 922(g)(1). After denying Mancillas's request to represent himself at his sentencing hearing, the district court sentenced him to 100 months' imprisonment. In his first appeal, he challenged only the sentence, not his convictions. We vacated that sentence and remanded for the district court to consider whether Mancillas, consistent with his Sixth Amendment right to self-representation, wished to proceed pro se at sentencing. *United States v. Mancillas*, 880 F.3d 297, 302, 304 (7th Cir. 2018). On remand, Mancillas decided that he wanted a lawyer after all. He was

appointed new counsel, and the district court imposed the same sentence. He appealed again, and we granted his motion to represent himself. We now affirm.

Reginald Shanklin v. Anderson Freeman No. 19-1006

Submitted January 7, 2020 — Decided January 7, 2020

Case Type: Civil

Central District of Illinois. No. 16-CV-4010 — **Harold A. Baker**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Reginald Shanklin, an African-American civil detainee at an Illinois treatment facility, accuses staff of violating his equal-protection rights and the First Amendment when they assigned his tasks, decided his therapy, disciplined him, and housed him. *See* 42 U.S.C. § 1983. The district court entered summary judgment for the defendants, correctly ruling that no reasonable juror could find that forbidden reasons motivated the staff's decisions. Thus, we affirm.

Johnnie Savory v. William Cannon, Sr. No. 17-3543

Argued September 24, 2019 — Decided January 7, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:17-cv-00204 — **Gary Feinerman**, *Judge*.

Before WOOD, *Chief Judge*, and EASTERBROOK, KANNE, ROVNER, SYKES, HAMILTON, BARRETT, BRENNAN, SCUDDER and ST. EVE, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*, dissenting.

ROVNER, *Circuit Judge*. Johnnie Lee Savory spent thirty years in prison for a 1977 double murder that he insists he did not commit. Even after his release from prison, he continued to assert his innocence. Thirty-eight years after his conviction, the governor of Illinois pardoned Savory. Within two years of the pardon, Savory filed a civil rights suit against the City of Peoria ("City") and a number of Peoria police officers alleging that they framed him. The district court found that the claims accrued more than five years before Savory filed suit, when he was released from custody and could no longer challenge his conviction in habeas corpus proceedings. Because the statute of limitations on his claims is two years, the district court dismissed the suit as untimely. Savory appealed to this court, and the panel reversed and remanded after concluding that the claim was timely under *Heck v. Humphrey*, 512 U.S. 477 (1994), because it accrued at the time of Savory's pardon, within the two-year limitations period. We granted the defendants' petition for rehearing *en banc* and vacated the panel's opinion and judgment. We again conclude that *Heck* controls the outcome here, and we reverse and remand for further proceedings.

USA v. Clifton Harris No. 19-1502

Submitted January 7, 2020 — Decided January 8, 2020

Case Type: Criminal

Eastern District of Wisconsin. No. 16-CR-73-JPS — **J. P. Stadtmueller**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

This case is on appeal for a second time. Clifton Harris pleaded guilty to two counts of carjacking, 18 U.S.C. §§ 211(1) & (2), and one count of brandishing a firearm during a crime of violence. §§ 924(c)(1)(A)(ii) & (iii). The district court sentenced him to 112 months' imprisonment—28 months for the carjacking charges, followed by a mandatory consecutive 84-month term for the firearm charge. *See* §

924(c). In his first appeal, Harris challenged only his sentence, which we vacated in light of *Dean v. United States*, 137 S. Ct. 1170 (2018). On remand, the district court explained the reasoning behind its original sentence, reweighed the § 3553(a) sentencing factors, and imposed an identical sentence. Harris appealed again... We GRANT counsel's motion to withdraw and DISMISS the appeal.

USA v. Suntez Pasley No. 19-1498

Submitted January 7, 2020 — Decided January 8, 2020

Case Type: Criminal

Southern District of Illinois. No. 17-CR-30150-MJR — **Michael J. Reagan**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*

ORDER

Suntez Pasley pleaded guilty to one count of bank robbery, see 18 U.S.C. § 2113(a), and was sentenced above the guidelines range to 210 months' imprisonment. Pasley now appeals his sentence, but his appointed counsel argues that the appeal is frivolous and seeks to withdraw. See *Anders v. California*, 386 U.S. 738, 746 (1967). Counsel's brief explains the nature of the case and addresses potential issues that we might expect an appeal of this kind to involve, so we limit our review to the subjects that he discusses and to the additional arguments that Pasley raises in his Circuit Rule 51(b) response... We GRANT counsel's motion to withdraw and DISMISS the appeal.

Troy Hinds v. Andrew M. Saul No. 19-1867

Argued December 18, 2019 — Decided January 9, 2020

Case Type: Civil

Central District of Illinois. No. 17-2182 — **Eric I. Long**, *Magistrate Judge*.

Before DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Troy Brandon Hinds, a 48-year-old man with musculoskeletal problems, challenges the denial of his application for disability benefits. He argues that the ALJ erred in weighing the medical opinion evidence, failed to evaluate his migraines as an impairment, and improperly discounted his and his fiancée's testimony regarding his symptoms. We see the evidence another way and affirm.

Linda Reed v. State of Illinois No. 19-1164

Submitted January 7, 2020 — Decided January 9, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14-C-2247 **Jorge L. Alonso**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

After an Illinois court denied Linda Reed's request for a court-appointed attorney to accommodate her disability during a proceeding related to the guardianship of her mother, Reed sued the State of Illinois alleging violations of the Americans with Disabilities Act and the Rehabilitation Act. The district court entered summary judgment for the State on both claims. Because Reed was not denied access to the courts, we affirm the judgment.

USA v. Carlos Vasquez-Abarca No. 18-3716

Argued November 7, 2019 — Decided January 9, 2020

Case Type: Criminal

Northern District of Illinois, Western Division. No. 3:17-cr-50079-1 — **Philip G. Reinhard**, *Judge*.
Before HAMILTON, SCUDDER, and ST. EVE, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Defendant Carlos Vasquez-Abarca appeals his sentence for reentering the United States illegally after a prior deportation following a felony conviction, in violation of 8 U.S.C. § 1326(a). The district court imposed a sentence of 72 months in prison, about twice the range of 30 to 37 months in prison advised by the Sentencing Guidelines. The sentence was well within the statutory limits and was a reasonable exercise of the judge's discretion under 18 U.S.C. § 3553(a) and *United States v. Booker*, 543 U.S. 220 (2005). The judge here also gave a sufficient explanation for the decision, see *Gall v. United States*, 552 U.S. 38, 50 (2007), based primarily on Vasquez-Abarca's criminal history and the fact that a previous sentence of 57 months for the same crime had not deterred him from committing the crime again. We affirm the sentence.

Simeon Amen Ra v. IRS No. 18-3460

Submitted January 7, 2020 — Decided January 9, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14-cv-8295 — **John Z. Lee**, *Judge*.
Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Simeon Washa Amen Ra, who describes himself as “an indigenous inhabitant traveler” and “One of We the People,” believes that the Internal Revenue Service has unlawfully garnished his wages and imposed liens on his property to collect unpaid penalties assessed after he filed numerous frivolous income-tax returns. He sued the IRS under assorted federal statutes. The district court concluded that Amen Ra's claims were barred by sovereign immunity and dismissed the case for lack of subject-matter jurisdiction. We agree with the district court that the doctrine of sovereign immunity bars Amen Ra's claims and affirm.

James Owens v. Stephen Duncan No. 18-1416

Submitted January 7, 2020 — Decided January 9, 2020

Case Type: Prisoner

Southern District of Illinois. Nos. 3:15-cv-1169-MJR-SCW — **Michael J. Reagan**, *Judge*.
Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

In these consolidated suits under 42 U.S.C. § 1983, James Owens, an Illinois inmate, brings two sets of claims about his medical care. First, he argues that prison officials violated the Eighth Amendment by not adequately treating his sinus headaches and other pain-related conditions. He also argues that they violated the First Amendment by withholding treatment to retaliate for a prior suit. The district court entered judgment for the defendants, correctly concluding that no evidence showed that they recklessly ignored Owens's medical needs or retaliated. Thus, we affirm.

Nicolas Subdiaz-Osorio v. Robert Humphreys No. 18-1061

Argued November 7, 2019 — Decided January 9, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 14-cv-1227 — **Pamela Pepper**, *Chief Judge*.
Before HAMILTON, SCUDDER, and ST. EVE, *Circuit Judges*.
HAMILTON, *Circuit Judge*, dissenting.

ST. EVE, *Circuit Judge*. Nicolas Subdiaz-Osorio stabbed his brother to death during a drunken fight. He attempted to flee the country but was stopped in Arkansas while driving to Mexico. Officers interrogated Subdiaz-Osorio in Arkansas and during the interview, after discussing the extradition process, Subdiaz-Osorio asked in Spanish, “How can I do to get an attorney here because I don’t have enough to afford for one?” The state courts were tasked with deciphering what “here” meant. The state argued that the question referred to the extradition hearing “here” in Arkansas; Subdiaz-Osorio argued this was an unequivocal invocation of his right to the presence of counsel “here” in the interrogation room. The state trial court found, and the Wisconsin Supreme Court affirmed, that Subdiaz-Osorio did not unequivocally invoke his Fifth Amendment right to counsel. The only issue in this habeas corpus appeal is whether that finding was contrary to or based on an unreasonable application of established Supreme Court precedent. See 28 U.S.C. § 2254(d). Our review is deferential and because the Wisconsin Supreme Court’s finding was reasonable, we affirm the district court’s denial of Subdiaz-Osorio’s petition for writ of habeas corpus.

Shanika Day v. Franklin Wooten No. 19-1930

Argued November 6, 2019 — Decided January 10, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:17-cv-04612 — **Tanya Walton Pratt**, *Judge*.
Before EASTERBROOK, MANION, and BARRETT, *Circuit Judges*.

MANION, *Circuit Judge*. Terrell Day died tragically while in police custody on September 26, 2015. This occurred while his hands were cuffed behind his back after he had winded himself during a chase following an apparent shoplifting. The autopsy report concluded his cause of death was a lack of oxygen in his blood, caused in part by his obesity, an underlying heart condition, and restricted breathing due to having his hands cuffed behind his back. In this § 1983 excessive force action brought against the arresting officers, the district court concluded the officers were not entitled to qualified immunity because “reasonable officers would know they were violating an established right by leaving Day’s hands cuffed behind his back after he complained of difficulty breathing.” For the reasons set forth below, we disagree with the district court’s conclusion of law and accordingly reverse.

Gerald Brown, Jr. v. Andrew M. Saul No. 19-1363

Argued December 18, 2019 — Decided January 10, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17 C 2631 — **Sheila Finnegan**, Magistrate Judge.
Before DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Gerald Brown suffers from hand tremors, along with a variety of other physical impairments. In 2014, he applied for disability benefits. An administrative law judge issued a partially favorable decision awarding a closed period of disability benefits after finding that Brown was disabled but later achieved medical improvement. The district court upheld the ALJ’s decision. In our view, however, the ALJ unreasonably concluded that Brown’s tremors were an “on and off” problem that so improved by July 8, 2015 as to eliminate any disability finding by that date. Because substantial evidence does not support the ALJ’s decision, we vacate the judgment and remand for further proceedings.

USA v. Charles Williams No. 19-1358

Argued December 12, 2019 — Decided January 10, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:17-cr-00446-1 — **Virginia M. Kendall**, *Judge*.
Before BAUER, EASTERBROOK, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. The Supreme Court’s recent decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), upset what was once a seemingly settled question of federal law. The Courts of Appeals had unanimously concluded that 18 U.S.C. § 922(g), which prohibits several classes of people from possessing a firearm or ammunition, required the government to prove a defendant knowingly possessed a firearm or ammunition, but not that he knew he belonged to one of the prohibited classes. *See, e.g., United States v. Lane*, 267 F.3d 715, 720 (7th Cir. 2001). The Supreme Court in *Rehaif* corrected this misinterpretation and held that under 18 U.S.C. §§ 922(g), 924(a)(2), the government must show “that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it.” 139 S. Ct. at 2194. Charles Williams had already pleaded guilty to possessing a firearm after a felony conviction when the Court issued *Rehaif*, and his plea reflected the law as it was in this Circuit before that decision. He seeks now, for the first time on direct appeal, to withdraw his plea. We conclude that he bears the burden of showing that his erroneous understanding of the elements of § 922(g) affected his substantial rights—his decision to plead guilty—before he may do so. He has failed to carry that burden, so we affirm the judgment.

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](#).