

Opinions for the week of June 6 - June 10, 2016

Anastazia Schmid v. Steve McCauley No. 14-2974

Argued November 10, 2015 — Decided June 8, 2016

Case Type: Prisoner

Southern District of Indiana, Indianapolis Division. No. 1:14-cv-200-WTL-TAB — **William T. Lawrence, Judge.**

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

EASTERBROOK, Circuit Judge. Anastazia Schmid was convicted in Indiana of murdering her boyfriend. She testified that she had heard a voice telling her that she is the Messiah and that the boyfriend had to die because he had sexually abused her daughter. The jury found her guilty but mentally ill. This spared her any risk of capital punishment but did not avoid a long term in prison; the sentence is 55 years, with the final five suspended in favor of probation... After her conviction became final, Schmid sought collateral review in state court. The process took eight years and was unavailing... Schmid filed her petition without counsel, but her mental problems led the state judiciary to appoint counsel for her. After the state collateral proceedings ended, counsel stopped representing her. Federal law gives state prisoners one year to commence proceedings under 28 U.S.C. §2254. See 28 U.S.C. §2244(d). That time is suspended while collateral proceedings are under way in state court. The parties agree that, when Schmid asked the state court for collateral review, 178 days remained in the period allowed by §2244(d). They also agree that the state collateral proceedings ended on November 8, 2012, when the Supreme Court of Indiana declined to hear her case. Schmid filed a federal petition on February 7, 2014, 15 months later. Given the time that had elapsed before state collateral review began, it was 278 days late. Schmid, representing herself, contended that equitable tolling justified the late filing. She gave two principal reasons: first, her mental problems (including post-traumatic stress disorder caused by her boyfriend's abuse of her and her daughter); second, delay by former counsel in turning over legal papers that she needed. Schmid contended that counsel did not produce these papers until October 2013, five months after the time set by §2244(d) had expired... Decisions about equitable tolling under §2244(d) are reviewed deferentially on appeal, whether the district court finds tolling warranted or unwarranted... We have not applied that deferential standard here, however, because the district court did not gather the evidence needed for decision. Nor did the court consider whether a hearing is necessary. Once counsel has had a chance to present the best arguments from Schmid's perspective, the district court should apply the approach of decisions such as *Estremera*... to determine whether a hearing is in order. VACATED AND REMANDED.

USA v. Jared S. Fogle No. 15-3770

Argued May 20, 2016 — Decided June 9, 2016

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:15-cr-00159 — **Tanya Walton Pratt, Judge.**

Before FLAUM and MANION, *Circuit Judges*, and ALONSO, *District Judge.*

FLAUM, Circuit Judge. In August 2015, Jared Fogle pled guilty to two counts of conviction for offenses involving the distribution and receipt of child pornography, as well as travel to engage in illicit sexual conduct with a minor. The district court imposed an above-guidelines sentence of 188 months in prison on each count, to be served concurrently. Fogle appeals his sentence, alleging that the district court committed procedural and substantive errors. Because the district court did not err in imposing an above-guidelines sentence, we affirm.

USA v. Sally Iriri No. 15-3692

Argued May 27, 2016 — Decided June 9, 2016

Case Type: Criminal

Western District of Wisconsin. No. 3:15-cr-00038-jdp-1 — **James D. Peterson**, *Judge*.
Before POSNER and FLAUM, *Circuit Judges*, and ALONSO, *District Judge*.

POSNER, Circuit Judge. The defendant pleaded guilty to federal wire fraud, 18 U.S.C. § 1343, was sentenced to 120 months in prison (the statutory maximum is twice that—20 years), and appeals...
AFFIRMED.

Matthew Claussen v. Michael Pence No. 16-1003

Argued May 27, 2016 — Decided June 10, 2016

Case Type: Civil

Northern District of Indiana, Hammond Division. 2:15-cv-00052 — **Philip P. Simon**, *Chief Judge*.
Before POSNER and FLAUM, *Circuit Judges*, and ALONSO, *District Judge*.

FLAUM, Circuit Judge. Plaintiffs are civil servants who hold elected office in the municipality that employs them. They challenge a recently-enacted Indiana law prohibiting persons from simultaneously holding elected office and being employed as civil servants in the same unit of government. Plaintiffs contend that the law violates the First Amendment and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The district court granted defendants' motion to dismiss, and for the reasons that follow, we affirm.

USA v. Eddie Bell No. 15-2670

Submitted May 20, 2016 — Decided June 10, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:04-cr-00495-4 — **Rebecca R. Pallmeyer**, *Judge*.
Before RIPPLE, KANNE, and SYKES, *Circuit Judges*.

PER CURIAM. This case comes to us in a unique procedural posture. Eddie Bell was convicted of conspiring to distribute crack cocaine and of using a communications facility to commit a felony. See 21 U.S.C. §§ 841(a), 843(b), 846. We affirmed Mr. Bell's sentence following a limited remand. Mr. Bell then brought a collateral attack under 28 U.S.C. § 2255, arguing that his attorney had abandoned him in this court by not replying to the district court's response to the limited remand. Granting collateral relief, the district court authorized Mr. Bell to submit to us the reply his attorney had not filed. Upon review of that reply, we conclude that Mr. Bell's submission offers no reason for us to revise his sentence. We therefore affirm the judgment of the district court.

Jason's Foods, Inc. v. Unsecured Creditors Committee No. 15-2356

Argued December 7, 2015 — Decided June 10, 2016

Case Type: Bankruptcy from District Court

Northern District of Illinois, Eastern Division. No. 14 C 7879 — **Ronald A. Guzmán**, *Judge*.
Before FLAUM, WILLIAMS, and SYKES, *Circuit Judges*.

SYKES, Circuit Judge. During the 90-day preference period preceding its Chapter 11 bankruptcy filing, Sparrer Sausage Company paid invoices it received from Jason's Foods, Inc., one of its suppliers, totaling roughly \$587,000. The Unsecured Creditors Committee asked that these payments be returned to the bankruptcy estate as avoidable preferences under § 547(b) of the Bankruptcy Code. Jason's Foods agreed that the payments were avoidable preferences but claimed an exception under 11 U.S.C. § 547(c)(2)(A) for otherwise preferential transfers made in the ordinary course of business. The bankruptcy judge allowed Jason's Foods to keep a significant share of the challenged payments but held that the timing of certain payments departed too drastically from the companies' past practice to be considered ordinary. The judge imposed preference liability on Jason's Foods for 11 invoices that he determined

were paid either too early or too late to be treated as ordinary—specifically, invoices Sparrer Sausage paid within 14, 29, 31, 37, and 38 days of issuance. The district court affirmed and Jason’s Foods appealed... REVERSED AND REMANDED.

Chicago Regional Council of Carpenters Pension Fund v. Schal Bovis, Inc. Nos. 14-3413 & 14-3336
Argued October 29, 2015 — Decided June 10, 2016
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 11-cv-00992 — **Sharon Johnson Coleman**, *Judge*, and **Manish S. Shah**, *Judge*.
Before FLAUM, MANION, and ROVNER, Circuit Judges.

MANION, Circuit Judge. This action was brought by four carpenter union fringe benefit funds (“the Funds”) under § 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185, and § 502(a) of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1132(a). The Funds allege that Schal Bovis, Inc., a general contractor that builds large and small buildings in the Chicago metropolitan area, failed to make fringe benefit payments for work performed by non-union labor, as was required under collective bargaining agreements. The Funds started with 36 claims of unpaid fringe benefits, but proceeded to trial on only four claims. The district court granted summary judgment to the Funds on all four claims on the issue of liability. From summary judgment, the parties proceeded to a bench trial on damages, and from there both parties appeal. Schal Bovis appeals the granting of summary judgment for two of the four claims, the calculation of damages for those two claims, and the amount of attorneys’ fees awarded. The Funds cross-appeal the calculation of damages for one of the claims and the admission of certain evidence for that calculation. We reverse the district court’s grant of summary judgment on the two claims Schal Bovis appeals and remand for further proceedings.

USA v. Christopher Saunders & Rashid Bounds Nos. 13-3863 & 13-3910
Argued January 22, 2015 — Decided June 10, 2016
Case Type: Criminal
Northern District of Illinois, Eastern Division. Nos. 1:12-cr-00589-2, 1:12-cr-00589-3 — **Rubén Castillo**, *Chief Judge*.
Before EASTERBROOK, MANION, and WILLIAMS, *Circuit Judges*.

WILLIAMS, Circuit Judge. Christopher Saunders and Rashid Bounds sold heroin on the west side of Chicago. They were indicted, and went to trial. A number of their co-conspirators testified against them, and they were convicted of conspiring to distribute at least 100 grams but less than one kilogram of heroin. At sentencing, the district court held them responsible for between three and ten kilograms of heroin and sentenced each of them to 216 months’ imprisonment. On appeal, the defendants contend that the court erroneously denied their motion to exclude the government expert’s fingerprint testimony because the government’s pretrial disclosures did not sufficiently disclose the basis of the expert’s opinion... we affirm the defendants’ convictions and sentences.

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](#).