

## **Opinions for the week of March 14 - March 18, 2016**

### **Vee's Marketing, Inc. v. USA** No. 15-2441

Argued January 6, 2016— Decided March 14, 2016

Case Type: Civil

Western District of Wisconsin. No. 3:13-cv-00481-bbc— **Barbara B. Crabb**, *Judge*.

Before POSNER and WILLIAMS, *Circuit Judges*, and PALLMEYER, *District Judge*.

POSNER, Circuit Judge. The plaintiff, a broker of fresh onions... is a Subchapter S corporation wholly owned by Scott Vee. The corporation's income is therefore reported on Mr. Vee's own tax returns. Since he effectively is the corporation, we'll call the plaintiff Vee rather than Vee's Marketing. Vee appeals from the dismissal of his suit for a refund of penalties that the Internal Revenue Service had assessed because he took deductions for contributions to a welfare benefit plan from 2004 through 2007 but didn't file a report (Form 8886, Reportable Transaction Disclosure Statement) with the Internal Revenue Service disclosing his participation in the plan... AFFIRMED.

### **John Dahlk v. Michelle Woomer** No. 15-2278

Submitted March 10, 2016 — Decided March 14, 2016

Case Type: Prisoner

Eastern District of Wisconsin. No. 12-CV-556 — **Rudolph T. Randa**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*.

#### **ORDER**

John Dahlk, a Wisconsin inmate, appeals the denial of his post-judgment motion to set aside the grant of summary judgment against him in his civil-rights suit alleging deliberate indifference of prison officials. The district court denied the motion, and we affirm.

### **USA v. Juan Adame-Hernandez** No. 15-2265

Submitted February 11, 2016 — Decided March 14, 2016

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:10CR00003-001 — **Jane E. Magnus-Stinson**, *Judge*.

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

#### **ORDER**

Juan Carlos Adame-Hernandez pleaded guilty to conspiracy to distribute a controlled substance. See 21 U.S.C. §§ 846, 841(a)(1). After he was sentenced, Adame-Hernandez filed a pro se motion arguing that his sentence should be reduced under 18 U.S.C. § 3582(c)(2), in order to recognize Amendment 782's reduction in the base offense levels for drug crimes. The district court denied this motion, explaining that the changes made by Amendment 782 occurred before sentencing and had already been taken into account. Adame-Hernandez appeals that decision, which we affirm.

### **Paul Dimmett v. Carolyn Colvin** No. 15-2233

Submitted February 11, 2016 — Decided March 14, 2016

Case Type: Civil

Southern District of Indiana, Evansville Division. No. 3:14-cv-00095-RLY-WGH — **Richard L. Young**, *Chief Judge*.

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

POSNER, Circuit Judge. The plaintiff, who is now 62 years old, applied in 2011 to the Social Security Administration for disability benefits. He claimed to be disabled from any gainful employment by a combination of ailments including asthma, chronic obstructive pulmonary disease (COPD), asbestosis, and a heel spur in his right foot. Turned down by the administrative law judge who heard his case, and then by the Social Security Appeals Council (which declined to review the administrative law judge's decision), he appealed to the district court, also without success; for on the recommendation of the magistrate judge to whom the district judge had referred the case, the district judge affirmed the denial of benefits without discussion, precipitating this appeal, which highlights several important recurring issues in the disability program... The judgment of the district court is reversed with instructions to remand the case to the Social Security Administration.

**USA v. Mario Rainone** No. 14-3154

Argued January 22, 2016 — Decided March 14, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 09-cr-206 — **Harry D. Leinenweber**, *Judge*.  
Before BAUER, FLAUM, and HAMILTON, *Circuit Judges*.

FLAUM, Circuit Judge. Mario Rainone appeals his conviction for unlawful possession of a firearm. The Addison Police Department (“APD”) arrested Rainone for residential burglary after placing a GPS device on Rainone’s vehicle. Following the arrest, APD officers obtained a search warrant for Rainone’s residence, in which they discovered a handgun. At trial, the jury convicted Rainone... we AFFIRM the judgment of the district court.

**Christine Kuhn v. UAL** No. 14-2953

Argued January 20, 2016 — Decided March 14, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:10-cv-07171 — **Sara L. Ellis**, *Judge*.  
Before DIANE P. WOOD, *Chief Judge*; DANIEL A. MANION, *Circuit Judge*; ILANA D. ROVNER, *Circuit Judge*.

**ORDER**

Christine Kuhn, a longtime employee of United Airlines, sued United in 2010 for retaliation under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act (“ADEA”). The district court denied Kuhn’s motion for leave to file a third amended complaint, and later granted summary judgment to United on Kuhn’s retaliation claims. Kuhn appeals both rulings. For the reasons that follow, we affirm.

**Kellie Pierce v. Zoetis, Inc.** No. 15-1900

Argued November 9, 2015 — Decided March 15, 2016

Case Type: Civil

Northern District of Indiana, Fort Wayne Division. No. 1:14 CV 00084 — **Theresa L. Springmann**, *Judge*.  
Before WOOD, *Chief Judge*; ROVNER, *Circuit Judge*; and SHAH, *District Judge*.

ROVNER, Circuit Judge. Kellie Pierce sued her former employer Zoetis, Incorporated and her former supervisor Lois Heuchert, alleging causes of action under Indiana state law. The district court dismissed Pierce’s amended complaint for failure to state a claim upon which relief could be granted. See Fed. R. Civ. P. 12(b)(6). Pierce appeals, arguing that she has stated a claim for tortious interference with a business relationship against her former supervisor Heuchert. Because the allegations in Pierce’s complaint fail to state a claim for tortious interference under Indiana law, we affirm.

**Edward Lewis v. Leon Stenz** No. 15-1808

Submitted March 10, 2016 — Decided March 15, 2016

Case Type: Prisoner

Western District of Wisconsin. 14-cv-446-wmc — **William M. Conley**, *Chief Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*.

**ORDER**

Edward Lewis was arrested in October 2003 and for several months was detained pending trial at the Forest County Jail in Crandon, Wisconsin. Lewis has been formally diagnosed with epilepsy and mental illness, and in this lawsuit, filed in June 2014, he alleges that he suffered from these same conditions during his stint at the jail but did not receive proper medical care. Instead, says Lewis, he was placed in segregation without a blanket or clothing and was made to shower in cold water. His physical and mental needs were not accommodated, continues Lewis, and on one occasion he hit his head during an epileptic seizure. He also was subjected to excessive force by jail guards. Lewis claims that the defendants, mostly persons having a direct role in the conditions of his confinement at the jail, violated his rights under the Fourteenth Amendment and Title II of the Americans with Disabilities Act... The judgment is AFFIRMED as to defendants Leon Stenz, Charles Simono, John Dennee, and Steve Weber. In all other respects, the judgment is VACATED, and the case is REMANDED for further proceedings.

**Calvin Davis v. USA** No. 14-3019

Argued January 4, 2016 — Decided March 15, 2016

Case Type: Prisoner

Northern District of Illinois, Western Division. No. 3:14-cv-50124— **Frederick J. Kapala**, *Judge*.

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

ROVNER, *Circuit Judge*. Calvin Davis pleaded guilty in 2010 to a narcotics conspiracy charge pursuant to a written plea agreement providing that he would be sentenced to a term equal to 66 percent of either the low end of the sentencing range advised by the Sentencing Guidelines or the statutory minimum term, whichever was greater... The court ultimately ordered Davis to serve 172 months in prison, a term that was equal to 66 percent of the low end of the Guidelines range and therefore consistent with the plea agreement, but more than twice what the parties had anticipated when they entered into that agreement. No appeal was filed from the sentence. But more than four years later... Davis filed a motion under 28 U.S.C. § 2255 contending that he was entitled to relief because the judge's sentencing findings regarding his criminal history had increased the statutory minimum term of imprisonment. He also asserted, among other claims, that his attorney was ineffective in advising him about the consequences of his plea (including the likely sentence) and in failing to file a notice of appeal following his sentencing. The district court dismissed the motion, reasoning that Davis had no viable claim under *Alleyne* given that the Supreme Court has not yet declared that decision applicable retroactively on collateral review, and that Davis's other claims were untimely. We agree and affirm the district court's judgment.

**Katherine Liu v. Cook County, Illinois** No. 14-1775

Argued September 9, 2015 — Decided March 15, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 10 C 6544 — **George M. Marovich**, *Judge*.

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

HAMILTON, *Circuit Judge*. Dr. Katherine Liu worked as a general surgeon at Cook County's Stroger Hospital for more than two decades before she lost her surgical privileges and was denied reappointment in 2008. Cook County and the three individual defendants, Dr. Richard Keen, Dr. James Madura, and the

estate of Dr. Phillip Donahue, contend that those actions were based on Dr. Liu's repeated refusal to operate on patients with appendicitis. Dr. Liu claims that their reasoning masked unlawful discrimination and retaliation. She brought a number of claims against defendants, including alleged violations of Title VII of the Civil Rights Act of 1964... The district court granted defendants' motion for summary judgment, finding that no reasonable trier of fact could conclude their reasons were pretextual. We agree. Dr. Liu has presented only the sparsest evidence of animus based on her race, sex, and national origin, none of it linked to the decisions at issue. She has also failed to present evidence creating a genuine dispute of fact as to whether the defendants' stated reasons for disciplining her were honest. We therefore affirm the decision of the district court.

**Roger Cocker v. Terminal Railroad Association** No. 15-2690

Argued February 26, 2016 — Decided March 16, 2016

Case Type: Civil

Southern District of Illinois. No. 12 C 1239 — **David R. Herndon**, *Judge*.

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

POSNER, Circuit Judge. The plaintiff is a participant in a retirement plan (we'll call it the Terminal Plan) governed by ERISA; the defendant is the plan. The plan document provides that "the retirement income benefit payable under this Plan shall be offset by the amount of retirement income payable under any other defined benefit plan ... to the extent that the benefit under such other plan or plans is based on Benefit Service taken into account in determining benefits under this Plan." The Terminal Plan based its calculation of the plaintiff's plan benefits on his total years of work, including the years he'd spent working for Union Pacific Railroad. So it made sense for the plan to subtract from the plaintiff's benefits under the Terminal Plan any benefits that Union Pacific had already given him for his years of working for that company... The plaintiff had taken early retirement from Union Pacific in 2006. His normal retirement date would have been in 2019, and had he waited until then to retire he would have received a retirement benefit of \$2,311.73 a month. Instead he chose to begin receiving his benefits in 2009, in the form of a monthly benefit of \$1,022.94. The two dollar figures are actuarially identical, in the sense that the present value of the two streams of money is the same because the smaller monthly benefit is received for 111 months longer than the larger one. After retiring from Union Pacific the plaintiff went to work for Terminal Railroad and became a participant in that company's retirement plan, the plan at issue in this case. When in 2010 he retired from Terminal Railroad, the Terminal Plan's administrator calculated the monthly benefit owed him for his combined years of service to Terminal and Union Pacific to be \$3,725.02, from which the Terminal Plan would deduct the monthly benefits payable under the Union Pacific Plan. The question is whether the amount to be deducted each month should be \$2,311.73 or \$1,022.94. The plaintiff argued to the plan administrator for the smaller deduction; the administrator rejected the argument. So the plaintiff sued the Terminal Plan under 29 U.S.C. § 1132(a)(1)(B). He won in the district court, precipitating the Plan's appeal to us. The plan administrator was right... The judgment of the district court is reversed with instructions to dismiss the suit with prejudice.

**USA v. William Rivera and Juan Duenas** Nos. 15-1740, 15-2637

Argued January 27, 2016— Decided March 16, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 13 CR 563 — **Thomas M. Durkin**, *Judge*.

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

HAMILTON, *Circuit Judge*, concurring in part and concurring in the judgments.

POSNER, Circuit Judge. The defendants pleaded guilty to conspiring to possess and distribute cocaine, in violation of federal law, 21 U.S.C. §§ 846, 841(a), and were sentenced to 60 months (Rivera) and 48 months (Duenas) in prison. But they reserved the right to appeal from the district judge's denial of their motions to suppress evidence consisting of drugs that federal agents had seized in searches of Duenas's garage and Rivera's truck, which was in the garage. The agents didn't have search warrants, and the

defendants contend that the searches therefore violated the Fourth Amendment. Contrary to popular impression, the Fourth Amendment does not require a warrant to search or to arrest—ever; its only reference to warrants is a condemnation of general warrants... The amendment has nevertheless been interpreted to require warrants in many cases—but not, as we'll see, in cases such as this... AFFIRMED.

**USA v. Jean Lawler** No. 15-1496

Argued December 16, 2015 — Decided March 16, 2016

Case Type: Criminal

Eastern District of Wisconsin. No. 08-CR-197-14-JPS — **J.P. Stadtmueller**, *Judge*.

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

WILLIAMS, Circuit Judge. Jean Lawler pleaded guilty to distributing heroin and conspiring to possess heroin with the intent to distribute it. The district court found, by a preponderance of the evidence, that Lawler sold the heroin that killed one of the conspiracy's customers. On that basis, in determining Lawler's Guidelines-recommended sentence, the court followed U.S.S.G. § 2D1.1(a)(2), which applies if "the offense of conviction establishes that death ... resulted from the use of the [heroin]." That was erroneous. Lawler's "offense of conviction"—distributing heroin and conspiring to possess heroin with the intent to distribute it—does not "establish" that a death resulted. Therefore, we vacate Lawler's sentence and remand.

**Martina Beverly v. Abbott Laboratories, Inc.** No. 15-1098

Argued September 9, 2015 — Decided March 16, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 CV 3216 — **Edmond E. Chang**, *Judge*.

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

WILLIAMS, Circuit Judge. Martina Beverly sued her former employer, Abbott Laboratories (Abbott), for employment discrimination and retaliation. During a private mediation, the parties signed a handwritten agreement stating that Beverly demanded \$210,000 and mediation costs in exchange for dismissing the lawsuit. Abbott later accepted Beverly's demand and circulated a more formal settlement proposal. After Beverly refused to execute this draft proposal, Abbott moved to enforce the original handwritten agreement. The district court found that the parties entered into a binding settlement agreement and granted Abbott's motion to enforce. Beverly appeals this decision, arguing that Abbott intended to be bound only by the terms of the typewritten proposal and that the handwritten agreement omits certain material terms... The judgment of the district court is AFFIRMED.

**Pedro Cruz-Hernandez v. Funds in the Amount of \$271,08** No. 15-2857

Argued January 26, 2016 — Decided March 17, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 126 — **Joan B. Gottschall**, *Judge*.

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

WOOD, Chief Judge. When Chicago police officers searched a van registered to Pedro Cruz-Hernandez, they found \$271,080 in currency. They had a warrant that was based on a drug dog's alerting to the presence of drugs in the van, but they found no drugs. The government nonetheless initiated a civil forfeiture action against the money, contending that it was derived from, or had been used to facilitate, drug trafficking. Pedro and his brother, Abraham Cruz-Hernandez, contested the forfeiture, maintaining that they had lawfully earned the money. The district court entered summary judgment in favor of the government, and the brothers have appealed. We conclude that a jury reasonably could find that the

government's evidence fails to establish, even by a preponderance, that the money is substantially connected to drug trafficking. We thus vacate the judgment and remand for further proceedings.

**USA v. Jeffery P. Miller** Nos. 14-3644 & 15-2727

Argued March 2, 2016 — Decided March 17, 2016

Case Type: Criminal

Northern District of Indiana, South Bend Division. No. 3:14CR77-001 — **Robert L. Miller, Jr.**, *Judge*.  
Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*.

**ORDER**

Jeffery Miller agreed in writing to waive his right to appeal his sentence, but he has now thought better of it and seeks to challenge his sentence nonetheless. After pleading guilty to transporting stolen goods interstate, see 18 U.S.C. § 2314, and to money laundering, see 18 U.S.C. § 1956(a)(1)(B)(i), the district court sentenced him to 135 months' imprisonment and two years' supervised release. In his first appeal (No. 14-3644), Miller argues that this court should ignore his appeal waiver and order a resentencing because the district court imposed unconstitutionally vague conditions of supervised release. After he filed that appeal, the district court granted a motion from the government to fix the challenged conditions. Although Miller has no particular objection to the changes the court made, he has appealed from the revised sentence (No. 15-2727), on the ground that the court lacked the power to modify his conditions. We consolidated the two appeals. We now dismiss the first one, No. 14-3644, because Miller cannot escape his appeal waiver; we affirm in No. 15-2727, based on our conclusion that the district court had the authority to modify the conditions of supervised release despite the pending appeal, and it committed no error in doing so.

**Kerby Lugue v. Loretta Lynch** No. 15-2517

Argued March 2, 2016 — Decided March 17, 2016

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A043 973 183  
Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*.

**ORDER**

Kerby Lugue is a lawful permanent resident who was ordered removed from the United States as an alien convicted of a controlled-substance crime, see 8 U.S.C. § 1182(a)(2)(A)(i)(II). Before us is his petition for review of an order of the Board of Immigration Appeals upholding an immigration judge's denial of his application for cancellation of removal. He contends that the Board and the immigration judge erred by concluding that his state-court conviction for possessing methamphetamine with intent to deliver is an aggravated felony that renders him ineligible for cancellation under 8 U.S.C. § 1229b(a). Because the Board correctly determined that Lugue's state crime is an aggravated felony under the immigration laws, we deny Lugue's petition.

**Michael Magruder v. Fidelity Brokerage Services** No. 15-1846

Submitted October 29, 2015 — Decided March 17, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 C 1188 — **John Robert Blakey**, *Judge*.  
Before WOOD, *Chief Judge*, and POSNER and EASTERBROOK, *Circuit Judges*.

EASTERBROOK, Circuit Judge. Michael Magruder bought 940,000 shares of Bancorp International Group (Bancorp) through his account at Fidelity Brokerage Services. He paid \$9,298 and some years

later asked Fidelity to deliver a certificate showing his ownership of the shares. When Fidelity did not comply, Magruder initiated arbitration through the Financial Industry Regulatory Authority (FINRA). Magruder and Fidelity chose simplified arbitration (see FINRA Rules 12401, 12800). In a simplified arbitration, the arbitrator cannot award more than \$50,000 in damages or order specific performance that would cost the losing party more than \$50,000. Magruder had demanded a total of \$28,000 in damages (actual plus punitive), so the dispute was amenable to the simplified procedure... The judgment of the district court is vacated, and the case is remanded with instructions to dismiss for lack of subject-matter jurisdiction.

**Maria Stapleton v. Advocate Health Care Network** No. 15-1368

Argued September 18, 2015 — Decided March 17, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:14-cv-01873 — **Edmond E. Chang**, *Judge*.

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

KANNE, *Circuit Judge*, concurring.

ROVNER, *Circuit Judge*. The Employee Retirement Income Security Act (ERISA) protects employees from unexpected losses in their retirement plans by setting forth specific safeguards for those employee plans. The Act, however, exempts church plans from those requirements. This case explores the question that has been brewing in the lower federal courts: whether a plan established by a church-affiliated organization, such as a hospital, is also exempt from ERISA's reach. We conclude that it is not.

**USA v. Deandre Haynes** No. 15-1301

Argued November 18, 2015 — Decided March 17, 2016

Case Type: Criminal

Central District of Illinois. No. 12-CR-20022 — **Harold A. Baker**, *Judge*.

Before RICHARD A. POSNER, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

**ORDER**

Deandre Haynes challenges the 120-month prison sentence imposed on his convictions for possessing, and conspiring to possess and distribute, pseudoephedrine. He argues that the sentencing court thought itself obligated to tip the scale in favor of retribution when applying the statutory sentencing factors in 18 U.S.C. § 3553(a), and also failed to address two principal arguments in mitigation. The first contention rests on a misreading of the judge's explanation for the sentence. And the two arguments in mitigation did not require any response from the judge. Thus, we affirm the sentence.

**Thomas Simstad v. Gerald Scheub** No. 15-1056

Argued September 25, 2015 — Decided March 17, 2016

Case Type: Civil

Northern District of Indiana, Hammond Division. No. 2:07-CV-407-JVB-APR — **Joseph S. Van**

**Bokkelen**, *Judge*.

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

WOOD, *Chief Judge*. Tom and Marla Simstad are longtime developers in Lake County, Indiana. In late 2004, the Simstads began the process of seeking approval from the Lake County Plan Commission for a proposed subdivision project called Deer Ridge South. In late 2006, the Commission approved the plans for the project. But this did not happen quickly enough to satisfy the Simstads. They believed that approval was delayed, at great cost to themselves, because of their support in 1996 for commission member Gerald Scheub's opponent in the County Commissioner primary race. They accordingly sued

several embers of the Commission and Lake County, alleging violations of the First and Fourteenth Amendments, the Racketeer Influenced and Corrupt Organizations Act (RICO), and various Indiana laws. The case went to trial before a jury, but the district court eliminated some of the Simstads' claims during the trial. The remainder of their theories went to the jury, which found for the defendants. The Simstads have raised a number of points on appeal, but we conclude that the district court properly disposed of each aspect of the case and thus affirm its judgment.

**Brent Jarvis v. Carolyn Colvin** No. 15-2796

Submitted March 18, 2016 — Decided March 18, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:14-cv-00651-TWP-MJD — **Tanya Walton Pratt**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

**ORDER**

Brent Jarvis applied for Disability Insurance Benefits and Supplemental Security Income, claiming to be disabled by diabetes, depression, and joint pain. An administrative law judge denied benefits, concluding that these impairments, although severe, do not prevent Jarvis from performing light work. In a thorough order the district court upheld that decision as supported by substantial evidence. See 42 U.S.C. § 405(g). On appeal Jarvis does not challenge the district court's conclusions or present a legal argument; instead, he asserts that his health has not improved and that no employer will hire him... DISMISSED.

**John Garcia v. USPS** No. 15-2534

Submitted March 18, 2016 — Decided March 18, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 10512 — **Joan B. Gottschall**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

**ORDER**

John Garcia appeals the dismissal of his employment-discrimination suit on claim preclusion grounds. We affirm.

**John Jahrling v. Estate of Stanley Cora** No. 15-2252

Argued December 11, 2015 — Decided March 18, 2016

Case Type: Bankruptcy from District Court

Northern District of Illinois, Eastern Division. No. 14 C 8056 — **James B. Zagel**, *Judge*.

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

HAMILTON, *Circuit Judge*. A bankruptcy court held that a legal malpractice judgment against debtor-appellant John Jahrling was not dischargeable because the judgment was for a "defalcation while acting in a fiduciary capacity." See 11 U.S.C. § 523(a)(4). The district court affirmed, and so do we.

**Louis Antonacci v. City of Chicago** No. 15-2194

Argued January 26, 2016 — Decided March 18, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 C 3750 — **Milton I. Shadur**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; RICHARD A. POSNER, *Circuit Judge*.

#### **ORDER**

For a little less than a year, Louis Antonacci worked on an at-will basis as a staff attorney at the firm of Seyfarth Shaw LLP. In May 2012, Seyfarth terminated his employment. To borrow Dylan Thomas's phrase, Antonacci did not go gentle into that good night. Instead, he first hired attorney Ruth Major to sue Seyfarth on his behalf. Years of litigation in the state courts ensued... Eventually his state-court suit was dismissed, and the Illinois Appellate Court affirmed that decision... Antonacci then turned to the federal court for redress, filing this suit under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–1968. He asserted that the many defendants he named had engaged in fraudulent acts designed to sabotage his state-court suit (which was generally for defamation) against Seyfarth and Ponder, and to thwart his application to be admitted to practice in the State of Illinois. He also raised a number of state-law claims, allegedly supplemental to these federal claims. The district court reviewed the complaint and decided on its own initiative to dismiss the case for want of federal jurisdiction... Its judgment is **AFFIRMED**.

#### **USA v. Michael Nash** No. 15-2188

Submitted March 18, 2016 — Decided March 18, 2016

Case Type: Criminal

Northern District of Indiana, Hammond Division. No. 2:13CR56-001 — **Philip P. Simon**, *Chief Judge*.  
Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

#### **ORDER**

Michael Nash pleaded guilty to a conspiracy to defraud the United States, 18 U.S.C. § 286, and aggravated identity theft, id. §§ 2, 1028A(a)(1), after he used others' personal information to file false tax returns with the IRS and collect the resulting refunds. Nash was sentenced to 48 months' imprisonment for the conspiracy to defraud and a consecutive 24 months' imprisonment for the identity theft. Despite an appeal waiver, Nash appealed. His lawyer asserts that the appeal is frivolous and seeks to withdraw... We **GRANT** counsel's motion to withdraw and **DISMISS** the appeal.

#### **USA v. Ahamad Atkins** No. 15-2180

Submitted March 18, 2016 — Decided March 18, 2016

Case Type: Criminal

Southern District of Illinois. No. 14-40061-001 — **J. Phil Gilbert**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

#### **ORDER**

Ahamad Atkins pleaded guilty to conspiracy to distribute a controlled substance, 21 U.S.C. §§ 846, 841(a)(1), and the district court sentenced him to 216 months' imprisonment. Atkins filed a notice of appeal, but his appointed lawyer has moved to withdraw on the ground that the appeal is frivolous... counsel's motion to withdraw is **GRANTED**, Atkins's motion for substitute counsel is **DENIED**, and the appeal is **DISMISSED**.

#### **Robert Madden v. Enrique Luy** No. 15-1653

Submitted February 11, 2016 — Decided March 18, 2016

Case Type: Prisoner

Eastern District of Wisconsin. No. 13-C-549 — **Rudolph T. Randa**, *Judge*.

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

**ORDER**

Robert Madden, a Wisconsin inmate, appeals the grant of summary judgment against him in this suit under 42 U.S.C. § 1983, asserting that two doctors (one at the prison where he was incarcerated, and one at a hospital to which he was referred) were deliberately indifferent to his serious medical needs when they failed appropriately to treat complications and pain he experienced following a surgical procedure. The district court concluded that no jury could rule in Madden's favor. We affirm.

**Shawn Stafford v. Paul Talbot** No. 15-1191

Submitted February 11, 2016 — Decided March 18, 2016

Case Type: Prisoner

Central District of Illinois. No. 12-2253 — **Harold A. Baker**, *Judge*.

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

**ORDER**

Shawn Stafford, an Illinois prisoner, sued a doctor and the healthcare administrator at Danville Correctional Center for violating the Eighth Amendment by ignoring his back pain in 2010 and 2011. See 42 U.S.C. § 1983. The district court granted summary judgment for both defendants. Because the claim against the administrator was unexhausted and the doctor did not recklessly disregard Stafford's pain, we affirm.

**Thomas Riley v. Chad Kolitwenzew** No. 15-1137

Submitted March 18, 2016 — Decided March 18, 2016

Case Type: Prisoner

Central District of Illinois. No. 11-2196 — **Colin S. Bruce**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

**ORDER**

Thomas Riley, a federal prisoner, was detained in the custody of the Marshals Service during his criminal case. He was housed under contract at the Jerome Combs Detention Facility in Kankakee, Illinois, and while at that jail he developed a painful inguinal hernia. Riley eventually sued several employees, see 42 U.S.C. § 1983, claiming that his hernia was being ignored, but the district court declared the matter "resolved" and dismissed the action sua sponte after learning that Riley had received successful surgery. We vacated that decision, but only as to one of the named defendants, Chad Kolitwenzew. It was clear that the other defendants were not personally involved in Riley's medical care, but Riley had plausibly alleged that Kolitwenzew, the assistant chief of corrections at the jail, knew about his situation but "did nothing to hasten surgery or minimize his pain." *Riley v. Kolitwenzew*, 526 F. App'x 653, 657 (7th Cir. 2013). On remand the district court granted summary judgment for Kolitwenzew, reasoning that a jury could not find from the evidence that he ignored Riley's medical needs. We agree with that view of the evidence and affirm the judgment.

**Larry Boss v. Julian Castro** No. 14-2996

Argued April 21, 2015 — Decided March 18, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 6007 — **Edmond E. Chang**, *Judge*.

Before EASTERBROOK and RIPPLE, *Circuit Judges*, and REAGAN, *District Judge*.

REAGAN, District Judge. Larry Boss worked as a general engineer for the U.S. Department of Housing and Urban Development (“HUD”) from 2002 to 2011. Pursuant to Title VII of the Civil Rights Act of 1964 (“Title VII,” 42 U.S.C. § 2000e-16), he sued the HUD Secretary on theories of workplace discrimination (Boss is an African-American), retaliation (for a prior EEOC discrimination complaint), and hostile work environment. The district court granted summary judgment against Boss. For the reasons set forth below, we affirm.

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](#).