

## **Opinions for the week of March 2 – March 6, 2020**

### **Stephen West v. Charter Communications, Inc.** No. 19-2442

Argued January 15, 2020 — Decided March 2, 2020

Case Type: Civil

Southern District of Indiana, New Albany Division. No. 4:16-cv-00145-RLY-DML — **Richard L. Young**, *Judge*.

Before BAUER, EASTERBROOK, and HAMILTON, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. This appeal presents a question about how 47 U.S.C. §541(a)(2), part of the Cable Communications Policy Act of 1984, affects use of a utility easement in Indiana. In 1938 a predecessor of Stephen West granted a perpetual easement to a predecessor of Louisville Gas & Electric Company, permitting it to build and maintain a 248-foot-tall tower carrying high-voltage electric lines. (Ownership of both the underlying land and the easement has changed hands since 1938. For simplicity we refer to the current owners.) In 2000 Louisville Gas permitted Charter Communications to install on the towers a fiber-optic cable that carries communications (telephone service, cable TV service, and internet data). Louisville Gas asked in 1990 for explicit permission to do this, and West refused. In 2000 it concluded that the existing easement allows the installation of wires that carry photons (that is, fiber-optic cables) along with the wires that carry electrons. West disagreed and filed this suit under the diversity jurisdiction, seeking compensation from Louisville Gas, under Indiana's substantive law, for the addition of the new cable... AFFIRMED

### **Carolyn Mascow v. Board of Education of Franklin Park School District** No. 19-2563

Argued February 20, 2020 — Decided March 3, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17-cv-6441 — **Sharon Johnson Coleman**, *Judge*.

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

EASTERBROOK, *Circuit Judge*. Carolyn Mascow, a teacher who had tenure under Illinois law, was laid off in 2017. Because her latest rating was "unsatisfactory," she was not only first in line for layoff when the school lost one position but also lacked any recall rights if the school district began hiring again— as it did. She contends in this suit under 42 U.S.C. §1983 that the Due Process Clause of the Fourteenth Amendment entitled her to a hearing before the layoff and that the "unsatisfactory" rating violated the First Amendment, applied to the states through the Fourteenth. The district court dismissed the due-process claim on the pleadings and in a second order granted summary judgment to defendants on the first-amendment claim. 2019 U.S. Dist. LEXIS 120074 (N.D. Ill. July 18, 2019). Local 571 of the Illinois Federation of Teachers joined Mascow as a plaintiff. Although the notice of appeal named both Mascow and Local 571, their joint brief does not make any argument on the Union's behalf. We treat its claims as abandoned... The judgment is vacated to the extent that it addresses Mascow's claim under the Due Process Clause and otherwise is affirmed. The case is remanded for proceedings consistent with this opinion.

### **Amos Financial, LLC v. Joseph Sneed** No. 19-2423

Submitted February 27, 2020 — Decided March 3, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:14-cv-06688 — **Charles R. Norgle**, *Judge*.

Before MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

**ORDER**

This is a successive appeal in a mortgage-foreclosure case. We dismissed the first appeal for lack of appellate jurisdiction. Now that the district court has entered a final appealable order, our jurisdiction is secure. Because the mortgagor's counterclaims were properly dismissed, and he provides no ground for vacating the foreclosure judgement, we affirm.

**Gerald Underwood v. Andrew M. Saul** No. 19-1920

Submitted February 10, 2020 — Decided March 3, 2020

Case Type: Civil

Western District of Wisconsin. No. 18-cv-326-slc — **Stephen L. Crocker**, *Magistrate Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

#### **ORDER**

Gerald Underwood, who suffers from obesity, diabetes, and vertigo, applied for disability benefits alleging an onset date of December 2008. An administrative law judge concluded that his impairments were severe but not disabling, and the district court upheld that determination. We affirm.

**USA v. Ionel Muresanu** No. 18-3690

Argued September 6, 2019 — Decided March 3, 2020

Case Type: Criminal

Eastern District of Wisconsin. No. 18-CR-129-JPS — **J.P. Stadtmueller**, *Judge*.

Before FLAUM, SYKES, and ST. EVE, *Circuit Judges*.

SYKES, *Circuit Judge*. Ionel Muresanu was arrested in Wisconsin for his role in a multistate ATM skimming operation. A grand jury charged him with four crimes: possession of counterfeit access devices and three counts of aggravated identity theft. The identity-theft charges were legally defective. The indictment alleged that Muresanu *attempted* to commit aggravated identity theft, but there is no such federal crime; the statutory definition of aggravated identity theft doesn't cover attempts. Muresanu's attorney did not object to the defective indictment in a pretrial motion under Rule 12(b)(3) of the Federal Rules of Criminal Procedure. Instead, he strategically waited until trial and moved for acquittal on the identity-theft counts after the government rested its case. The district judge denied the motion, ruling that Muresanu waived the objection by failing to raise the matter in a Rule 12(b)(3) motion. The judge then deleted the attempt language from the jury instructions and instructed the jury on the elements of the completed crime. The modified instruction conformed to the statutory offense but varied from the charges in the indictment. The evidence overwhelmingly supported conviction on the reformulated charges, and the jury found Muresanu guilty on all counts. The judge imposed a prison sentence of 34 months on count one and the mandatory 24-month sentence on each of the three identity-theft counts, consecutive to count one but concurrent to the other identity-theft counts. Muresanu raises two challenges to the identity-theft convictions... We affirm in part and reverse in part.

**Xiao Liang v. William Barr** No. 19-2682

Argued March 3, 2020 — Decided March 4, 2020

Case Type: Agency

On Petition for Review of an Order of the Board of Immigration Appeals. No. A095-928-809

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

#### **Order**

Xiao Jun Liang, a citizen of China, entered the United States in 2003 and was ordered removed the same year. She sought reopening, without success, in 2009 and again in 2012. In 2018 she filed a third motion to reopen, contending (for the first time) that her Notice to Appear in 2003 had been defective because it did not supply a date for her hearing (the date was added six days later, in a separate document), and that as a result she is entitled to relief under 8 U.S.C. §1229b(b)(1). The Board denied this motion for three reasons... The petition is dismissed for want of jurisdiction.

**Donald Bauer v. Kimberly Koester** No. 19-1786

Submitted February 10, 2020 — Decided March 4, 2020

Case Type: Civil

Southern District of Illinois. No. 18-cv-1215-MJR-RJD — **Michael J. Reagan**, *Judge*.

Before KANNE, SYKES, and ST. EVE, *Circuit Judges*.

PER CURIAM. This appeal arises out of Illinois foreclosure proceedings on real estate owned by Donald and Laretta Bauer. Even though they were able to redeem their property, the Bauers and two of their children, Karla and David (collectively, “the Bauers”), believe they were harmed by the proceedings and now seek damages under 42 U.S.C. § 1983. The Bauers named as defendants many of the people and entities involved in the foreclosure: Donald and Laretta’s attorneys, the attorneys for the foreclosing plaintiffs, the bank that maintained an escrow account at issue and its employees, the state-court clerk and deputy clerks, and the judge who presided over the foreclosure proceedings. The district court dismissed the Bauers’ suit as barred by the *Rooker-Feldman* doctrine. *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923). Because the district court properly applied that doctrine, we affirm.

**M. Terri Massaglia v. Andrew M. Saul** No. 19-1382

Argued January 29, 2020 — Decided March 4, 2020

Case Type: Civil

Western District of Wisconsin. No. 3:18-cv-00014-bbc — **Barbara B. Crabb**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

**ORDER**

Maria Terri Massaglia challenges the denial of her application for Social Security disability benefits based on chronic back pain. An administrative law judge found her not disabled, and the district court concluded that substantial evidence supported the ALJ’s decision. Massaglia argues that the ALJ erred by failing to assess adequately whether she met or equaled any listed criteria for a presumptive finding of disability and by making a flawed credibility determination. Because substantial evidence supports the ALJ’s decision, we affirm.

**David Servin v. City of Chicago** No. 19-1248

Submitted March 4, 2020 — Decided March 4, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15-cv-5706 — **Jorge L. Alonso**, *Judge*.

Before DIANE S. SYKES, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

**ORDER**

David Servin spent almost 10 years trying to get a job as a Chicago police officer. When he wasn’t hired, he sued the city, contending that the police department discriminated against him because of his age, in

violation of the Age Discrimination in Employment Act. See 29 U.S.C. § 623. The district court entered summary judgment for the city on multiple grounds, including Servin's failure to rebut the city's evidence that it rejected his application when he was 36 years old. Because the Act protects only persons who are at least 40 years old, we affirm on that basis.

**Daniela Guerra-Rocha v. William P. Barr** No. 18-3471

Argued November 4, 2019 — Decided March 4, 2020

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. Nos. A208-575-411, A208-575-412 and A208-575-413

Before WOOD, Chief Judge, and BAUER and BRENNAN, Circuit Judges.

WOOD, Chief Judge. Daniela Guerra Rocha has filed a petition for review of a decision of the Board of Immigration Appeals (BIA or Board). The BIA held that Guerra Rocha and her sons are subject to removal from the United States, despite the fact that she has made a prima facie showing of eligibility for nonimmigrant visa status. Because the BIA failed to render a reasoned decision that accords with its precedents, we grant Guerra Rocha's petition and remand for further proceedings.

**Ryan Ross v. USA** Nos. 17-2880 & 17-2902

Argued December 18, 2019 — Decided March 4, 2020

Case Type: Prisoner

Northern District of Indiana, Hammond Division. No. 2:16-cv-00233-JVB — **Joseph S. Van Bokkelen, Judge.**

Northern District of Indiana, Hammond Division. No. 2:16-cv-00255-JVB — **Joseph S. Van Bokkelen, Judge.**

Before HAMILTON, BRENNAN, and SCUDDER, *Circuit Judges.*

HAMILTON, *Circuit Judge.* In 2011, petitioners Ralph Oliver and Ryan Ross pleaded guilty to violating 18 U.S.C. § 924(c) for brandishing a firearm during a "crime of violence"—theft from a federally licensed firearms dealer, 18 U.S.C. § 922(u). In 2016, both filed motions under 28 U.S.C. § 2255 to vacate their § 924(c) convictions. They argued that, after *United States v. Davis*, 139 S. Ct. 2319 (2019), a violation of § 922(u) no longer counts as a crime of violence. The district court denied relief. We affirm. Express collateral-attack waivers in Oliver and Ross's plea agreements are valid and bar their challenges to their convictions and sentences.

**Leonard Thomas v. Nicholas Wardell** No. 17-2582

Argued December 13, 2019 — Decided March 4, 2020

Case Type: Prisoner

Northern District of Indiana, South Bend Division. No. 15-cv-548 — **Joseph S. Van Bokkelen, Judge.**

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

BRENNAN, *Circuit Judge.* Indiana inmate Leonard Thomas sued state correctional officials, alleging deficient health care, inadequate conditions of confinement, and that officers treated him with excessive force. The district court found Thomas's pro se complaint deficient and gave him opportunities to remedy its problems but ultimately dismissed his case for failure to prosecute. The court also denied three requests by Thomas for appointed counsel. Because Thomas made reasonable attempts to obtain counsel and the district court did not assess whether Thomas appeared competent to litigate the case given its difficulty, we conclude the district court abused its discretion by denying Thomas's requests to appoint counsel. This outcome prejudiced Thomas, so we reverse and remand for an attorney to be appointed for him.

**Mikhail Tsukerman v. Western Community Unit School** No. 19-3075

Submitted March 4, 2020 — Decided March 5, 2020

Case Type: Civil

Central District of Illinois. No. 16-3214 — **Sue E. Myerscough**, *Judge*.

Before DIANE S. SYKES, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

**ORDER**

A year after voluntarily dismissing a discrimination case against his former employer, Mikhail Tsukerman, a Jewish man in his fifties and a former high school math teacher, refiled the case. The district court stayed the proceedings until Tsukerman paid the employer's expenses from the former litigation and, when he did not pay, dismissed the case for want of prosecution. Because the court did not abuse its discretion in imposing costs or dismissing the case when Tsukerman refused to pay, we affirm the judgment.

**Byron Roderick v. BRC Rubber and Plastics** No. 19-2830

Submitted March 4, 2020 — Decided March 5, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:17-cv-02201-TWP-MPB — **Tanya Walton Pratt**, *Judge*.

Before DIANE S. SYKES, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

**ORDER**

Byron Roderick, who describes himself as an "openly gay male," quit his job at BRC Rubber and Plastics, Inc. He has now sued BRC, contending that a company manager subjected him to a hostile work environment because of his sexual orientation. The district court entered summary judgment for BRC. Because Roderick offered no evidence that his sexual orientation motivated the manager's actions or that those actions were severe or pervasive, we affirm.

**Phillip Littler v. Amber Wallace** No. 19-2305

Submitted March 4, 2020 — Decided March 5, 2020

Case Type: Prisoner

Southern District of Indiana, Terre Haute Division. No. 2:16-cv-175-WTL-DLP — **William T. Lawrence**, *Judge*.

Before DIANE S. SYKES, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

**ORDER**

After the prison mailroom supervisor destroyed a letter from his cousin under a policy restricting communication between current and former inmates, Phillip Littler sued her for enforcing an unconstitutional policy. See 42 U.S.C. § 1983. His complaint included several other claims and defendants, but only his First Amendment challenge to the policy proceeded to a bench trial. The district judge concluded that the prison's policy was constitutional because it was related to a legitimate penological interest. Littler appeals, challenging that determination and several pre-trial rulings. We affirm.

**Marion HealthCare, LLC. v. Becton Dickinson & Company** No. 18-3735

Argued September 27, 2019 — Decided March 5, 2020

Case Type: Civil

Southern District of Illinois. No. 3:18-cv-01059-NJR-RJD — **Nancy J. Rosenstengel**, *Chief Judge*.  
Before WOOD, *Chief Judge*, and KANNE and BARRETT, *Circuit Judges*.

WOOD, *Chief Judge*. Since the Supreme Court's decision in *Illinois Brick v. Illinois*, 431 U.S. 720 (1977), only those buyers who purchased products directly from the antitrust violator have a claim against that party for treble damages. "Indirect purchasers" who paid too much for a product because cartel or monopoly overcharges were passed on to them by middlemen must take their lumps and hope that the market will eventually sort everything out. See, e.g., *Sharif Pharm., Inc. v. Prime Therapeutics, LLC*, Nos. 18-2725 and 18-3003, 2020 WL 881267 at \*2 (7th Cir. Feb. 24, 2020). Matters are different, however, when a monopolist enters into a conspiracy with its distributors. In such cases, "the first buyer from a conspirator is the right party to sue." *Paper Sys. Inc. v. Nippon Paper Indus. Co.*, 281 F.3d 629, 631 (7th Cir. 2002). The plaintiffs in this case ("the Providers") are healthcare companies that purchased medical devices manufactured by Becton Dickinson & Company... We VACATE the judgment of the district court and REMAND for further proceedings in accordance with this opinion.

**USA v. Clifton Robinson** No. 18-3426

Submitted March 4, 2020 — Decided March 5, 2020

Case Type: Criminal

Central District of Illinois. No. 16-cr-10053-001 — **Michael M. Mihm**, *Judge*.

Before DIANE S. SYKES, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

**ORDER**

At a bench trial, the district court found Clifton Robinson guilty of sixteen fraud-related counts: conspiracy to defraud the government, 18 U.S.C. § 286, eight counts of wire fraud, *id.* § 1343, five counts of mail fraud, *id.* § 1341, and two counts of aggravated identity theft, *id.* § 1028A(a)(1). The court sentenced Robinson to 99 months in prison (63 concurrent months for Counts 1 through 14, and 24 months on Counts 15 and 16, with 36 of those months to run consecutively to the 63-month sentence) followed by three years' supervised release. The court also ordered him to pay \$1.2 million in restitution. Robinson filed a notice of appeal, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw under *Anders v. California*, 386 U.S. 738 (1967). Robinson opposes counsel's 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. Because the analysis appears thorough, we limit our review to the subjects that she discusses and those in Robinson's response... Accordingly, we GRANT counsel's motion to withdraw and DISMISS Robinson's appeal.

**Carlos Alvarez-Espino v. William Barr** No. 19-2289

Argued January 7, 2020 — Decided March 6, 2020

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A200-557-981

Before BRENNAN, SCUDDER, and ST. EVE, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Carlos Alvarez-Espino entered the United States illegally in 1996, settled in Chicago, but later ran into legal trouble and came to the attention of immigration enforcement. During his time here, Alvarez-Espino assisted law enforcement by helping to solve a 2002 gas station robbery in which he was held at gunpoint. Helping the police made Alvarez-Espino potentially eligible for a U visa, which could allow him to stay in the United States. He hire immigration counsel, but his lawyer failed to realize that Alvarez-Espino had a chance at receiving a U visa and instead pursued another remedy without success. Alvarez-Espino changed lawyers, but it was too late to reverse course. After protracted

proceedings, the Board of Immigration Appeals denied multiple requests for relief, leaving Alvarez-Espino at risk of removal and having to await a decision on his U visa application from Mexico. In denying relief, the Board held Alvarez-Espino to an unduly demanding burden on his allegation of ineffective assistance of counsel. But the law is equally clear that Alvarez-Espino's ability to continue pursuing a U visa means that he cannot show prejudice from his attorney's performance. So we are left to deny his petition for review.

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**Ronald Crosby v. City of Chicago** Nos. 18-3693 & 19-1439

Argued December 10, 2019 — Decided February 5, 2020 Amended March 6, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-4094 — **Virginia M. Kendall**, *Judge*.

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

BARRETT, *Circuit Judge*. This case is about the scope of a release in a settlement agreement. In 2015, Ronald Crosby settled a lawsuit against Eduardo Gonzalez, a Chicago police officer who allegedly shoved Crosby out of a third-floor window before arresting him. In the settlement stipulation, Crosby released "all claims he had, has, or may have in the future ... arising either directly or indirectly out of the incident" against Gonzalez, the City of Chicago, and all future, current, or former City officers. Crosby insists that this release does not bar his new suit against the City and its officers for torts they committed in the course of covering up Gonzalez's misconduct..... The district court's judgment and award of costs are AFFIRMED.

**Jacqueline Johnson v. Chicago Board of Education** No. 18-2642

Submitted March 4, 2020 — Decided March 6, 2020

Case Type: Civil

Northern District of Illinois. No. 12-C-3670 — **Matthew F. Kennelly**, *Judge*.

Before DIANE S. SYKES, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

**ORDER**

The Chicago Board of Education did not rehire Jacqueline Johnson after she was laid off while on medical leave for a back injury. Johnson sued under the Americans with Disabilities Act, asserting that the Board failed to rehire her because of her disability. Johnson also claimed that the Board violated Illinois law by not rehiring her in retaliation for pursuing worker's compensation claims. The district court entered summary judgment for the Board on both claims. Because Johnson never applied for any positions and failed to support her assertion that it would have been futile to do so,.... We have considered Johnson's remaining arguments, and none has merit. AFFIRMED

**Sugarloaf Fund, LLC v. CIR** No. 19-2468

Argued February November 4, 2019 — Decided March 6, 2020

Case Type: Tax

Appeal from the United States Tax Court. No. 30410-12, No. 15857-13, No. 15858-13, No. 165-14, No. 28657-14

Before RIPPLE, SYKES, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Before us for a third time is a tax shelter designed by attorney John Rogers that the Tax Court has determined is an abusive sham. We reached the same conclusion in our prior opinions in *Superior Trading, LLC v. Commissioner*, 728 F.3d 676 (7th Cir. 2013), and *Sugarloaf Fund, LLC v. Commissioner*, 911 F.3d 854 (7th Cir. 2018). We do so again here in an appeal focusing on different tax years.... Only one further point warrants underscoring. The Internal Revenue Service, Tax Court, and now our court have devoted substantial resources over multiple proceedings to deciphering foreign and domestic transactions, understanding complex tax structures, and separating the fair from the

fraud. None of this has gone well for Rogers or his partnership, the Sugarloaf Fund. While we cannot control any party's litigation choices, we can sound caution to those who persist in pressing claims lacking any merit. The time has come to do so here, and we AFFIRM.

**Marshall Spiegel v. Michael Kim** No. 18-2449

Argued January 23, 2020 — Decided March 6, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:16-cv-04809 — **Sara L. Ellis**, *Judge*  
Before ROVNER, HAMILTON, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. For over four years, Marshall Spiegel and Michael Kim have been embroiled in a blazing and bitter dispute in the Circuit Court of Cook County, Illinois. Before us is one piece of this angry and protracted wrangle— one that arose when Kim requested attorneys' fees in the state court litigation. Spiegel took to federal court to allege that this run-of-the-mill request violated the Fair Debt Collection Practices Act, a federal statute that prohibits misleading and unfair practices in the collection of consumer debts. The district court dismissed Spiegel's complaint, and we affirm.

**Steven Schmidt v. Kimbell Fuiks** No. 19-2562

Submitted March 4, 2020 — Decided March 6, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 2:19-CV-821-JPS **J.P. Stadtmueller**, *Judge*  
Before DIANE S. SYKES, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

**ORDER**

Steven Schmidt, a disabled Milwaukee resident suffering from spinal injuries, sued two of his doctors, alleging that one performed the wrong surgery and both covered it up. The district court dismissed the case for lack of subject-matter jurisdiction. We agree and affirm the judgment.

**Wendy Dolin v. GlaxoSmithKline LLC** No. 19-2547

Argued January 22, 2020 — Decided March 6, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:12-cv-6403 — **William T. Hart**, *Judge*  
Before WOOD, *Chief Judge*, and SYKES and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. This appeal presents two questions: first, whether we should reopen our court's prior judgment in this case, see *Dolin v. GlaxoSmithKline LLC*, 901 F.3d 803 (7th Cir. 2018) ("Dolin I"), and second, whether we should impose sanctions against appellant Wendy Dolin or her counsel for pursuing this appeal. Our decisions are not to re-open the judgment and not to impose sanctions on Mrs. Dolin or her counsel....The district court's denial of relief under Federal Rule of Civil Procedure 60(b)(6) is AFFIRMED. Appellee Glaxo-SmithKline's motion for fees and costs under Federal Rule of Appellate Procedure 38 is DENIED.

**Robert Holleman v. Dushan Zatecky** No. 19-1326

Argues November 6, 2019 — Decided March 6, 2020

Case Type: Prisoner

Southern District of Indiana, Terre Haute Division. No. 2:16-cv-00305 — **James R. Sweeney, II**, *Judge*  
Before EASTERBROOK, MANION, and BARRETT, *Circuit Judges*.

MANION, *Circuit Judge*. Robert Holleman is the quintessential jailhouse lawyer, and he has achieved notable success in that role. Through prior lawsuits he has been awarded thousands of dollars in

damages. In late 2015, in response to Holleman's multitudinous lawsuits, grievances, and an interview he provided to a local newspaper, the superintendent of Pendleton Correctional Facility transferred Holleman to another prison. The question for us today is whether that transfer violated Holleman's clearly established right to be free from retaliation for protected First Amendment activity, such that his suit can overcome qualified immunity. We hold it did not....Accordingly, we AFFIRM the decision of the district court

**USA v. James Simon** No. 19-1317

Argued November 5, 2019 — Decided March 6, 2020

Case Type: Criminal

Northern District of Indiana, South Bend Division. No. 3:10-cr-00056-RLM-1 — **Robert L. Miller, Jr., Judge.**

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

HAMILTON concurs

ROVNER, *Circuit Judge.* James Simon appeals the district court's decision denying his motions to reconsider amendments to his restitution obligations. *See United States v. Simon*, 2019 WL 422447 (N.D. Ind. Feb. 4, 2019). We conclude that the majority of the challenges Simon is making could and should have been raised at sentencing and on direct appeal from his conviction and were therefore waived; as to the remainder, his appeal is untimely. We therefore affirm the judgment.....Finding none of Simon's challenges to his restitution obligations, as established by either the original or amended restitution order, to be timely, we AFFIRM the denial of his motions to reconsider.

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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](#).