

Opinions for the week of March 28 - April 1, 2016

Shellie Johnson v. Carrington Mortgage Services No. 15-3545

Submitted March 28, 2016 — Decided March 28, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 15-CV-173 — **William E. Duffin**, *Magistrate Judge*.

Before DIANE P. WOOD, *Chief Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Shellie Johnson and her sons allege that Carrington Mortgage Services violated federal laws by harassing her, threatening her with foreclosure, and falsely reporting to the credit bureaus that she was delinquent on her mortgage payments. After the plaintiffs amended their complaint three times, the district court dismissed the fourth complaint for failure to state a claim. Because that conclusion is correct, we affirm.

USA v. Derek Ortiz No. 15-3240

Submitted March 15, 2016 — Decided March 28, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 10 CR 187 — **Matthew F. Kennelly**, *Judge*.

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

POSNER, *Circuit Judge*. This appeal is a sequel to one of the four appeals decided by us in *United States v. Thompson*, 777 F.3d 368 (7th Cir. 2015). The appellant, Derek Ortiz, had been sentenced to prison for 135 months for three bank robberies. His appeal did not challenge his prison sentence, but only the conditions of supervised release imposed by the district judge. We reversed the judge's supervised-release rulings... and remanded for full resentencing. On remand the judge reimposed the 135-month prison sentence (though without explanation he said that Ortiz's "total sentence is 131 months") but altered the conditions of supervised release. Ortiz has again appealed, challenging some of those conditions... The problems we've identified with the conditions of supervised release imposed by the sentencing judge require that he reconsider the conditions. We therefore vacate the sentence and remand for resentencing.

Andre Cobige v. PHH Mortgage Solutions No. 15-2446

Submitted March 28, 2016 — Decided March 28, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 9340 — **Virginia M. Kendall**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Andre Cobige's wife, Tiffani Wilson, defaulted on her mortgage, and the holder of the note and mortgage filed a foreclosure action in an Illinois circuit court. Cobige tried to intervene in the case, but the state court denied that request because Cobige did not have an ownership interest in the house or any potential liability for the defaulted note. The state court foreclosed the mortgage and later, in July 2014, confirmed a judicial sale of the residence. Five months later Cobige filed this suit... The suit names several defendants, including PHH Mortgage Corporation, which filed the foreclosure action, and claims that the state proceeding was invalid on the ground that PHH "was not the true owner" of the note. On the defendants' motion, the district court dismissed the action for lack of subject-matter jurisdiction. Cobige's appeal from that decision is frivolous... AFFIRMED.

Cresenciano Martinez-Garduno v. Loretta Lynch No. 15-2381

Argued December 16, 2015 — Decided March 28, 2016

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A200-152-801

Before DANIEL A. MANION, *Circuit Judge*;MICHAEL S. KANNE, *Circuit Judge*;ANN CLAIRE WILLIAMS, *Circuit Judge*.

ORDER

Cresenciano Martinez-Garduno, a native and citizen of Mexico, petitions for review of the denial of a motion to continue his removal proceedings. Despite admitting his ineligibility for relief from a notice of removal, Martinez-Garduno sought the continuance in order to support his girlfriend as she recovered from gallbladder surgery. The Immigration Judge (“IJ”) determined that the girlfriend’s surgery was not “good cause” for a continuance under 8 C.F.R. § 1003.29, and the Board of Immigration Appeals (“Board”) affirmed. Because the claim in Martinez-Garduno’s petition for review lacks merit, we deny the petition.

USA v. Luis X. Perez-Leon No. 15-2370

Submitted March 28, 2016 — Decided March 28, 2016

Case Type: Criminal

Southern District of Illinois. No. 1:14CR00163-001 — **Sarah Evans Barker**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*;MICHAEL S. KANNE, *Circuit Judge*;DIANE S. SYKES, *Circuit Judge*.

ORDER

Luis Perez-Leon pleaded guilty to one count of Access Device Fraud, see 18 U.S.C. § 1029(a)(3). He then filed a notice of appeal, but his appointed lawyer asserts that the appeal is frivolous and seeks to withdraw... Counsel’s motion to withdraw is GRANTED, and the appeal is DISMISSED.

Theresa Johnson v. Beach Park School District No. 15-2316

Submitted March 28, 2016 — Decided March 28, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 5068 — **Sara L. Ellis**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*;MICHAEL S. KANNE, *Circuit Judge*;DIANE S. SYKES, *Circuit Judge*.

ORDER

Theresa Johnson applied for a substitute teacher position with the Beach Park School District during the 2011-2012 school year, but was not hired. She brought this employment-discrimination suit against the school district, asserting that the district passed her over for younger, white, and non-disabled applicants and retaliated against her for declining to substitute teach during the 2007-2008 school year. The district court granted summary judgment for the school district, concluding that Johnson failed to establish a prima facie case of race or disability discrimination or retaliation, and that she had failed to present her charge of age discrimination to the Equal Employment Opportunity Commission. We affirm.

Andrei Davidescu v. Loretta Lynch No. 15-2099

Argued December 16, 2015 — Decided March 29, 2016

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A205-556-102

Before DANIEL A. MANION, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

ORDER

Andrei Davidescu, a 27-year-old Moldovan citizen, sought asylum, withholding of removal, and protection under the Convention Against Torture, based on harm he suffered on account of his Roma ethnicity. In his testimony he described numerous attacks at the hands of classmates and neighbors while he was growing up in Moldova. The immigration judge, however, noted significant inconsistencies in his hearing testimony, found him not credible, and concluded that he had not sufficiently corroborated his claim. Because these conclusions are supported by substantial evidence, we deny the petition for review.

Nikolay Zyapkov v. Loretta Lynch No. 15-2063

Argued December 16, 2015 — Decided March 29, 2016

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A088-671-259

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

MANION, *Circuit Judge*. Nikolay Zyapkov, a Bulgarian citizen, applied to become a lawful permanent resident based on his marriage to a U.S. citizen. An immigration judge denied that application in a decision upheld by the Board of Immigration Appeals. Zyapkov petitions for review of the Board's decision, but we conclude that his challenges to that decision are without merit.

Louis Bianchi v. Thomas McQueen No. 14-1635

Argued April 16, 2015 — Decided March 29, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:12-cv-00364 — **Robert M. Dow, Jr.**, *Judge*.

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

SYKES, *Circuit Judge*. In 2004 Louis Bianchi was elected to the office of State's Attorney in McHenry County, Illinois, and immediately embarked on a program of reforms. Along the way he acquired a few enemies. In 2006 one of the secretaries in the office resigned and took a treasure trove of sensitive documents with her. Working with a disgruntled Assistant State's Attorney whom Bianchi had demoted, the secretary delivered the documents to the media and to Bianchi's opponent in the next election. When Bianchi learned of the document theft, he asked a judge to appoint a special prosecutor to investigate. The judge obliged, and the former secretary was charged with several felonies and eventually pleaded guilty to computer tampering. In the meantime, Bianchi's opponent—aided by the secretary and other unnamed political enemies—sought the appointment of another special prosecutor, this time to investigate Bianchi for politicking on the public's dime (among other alleged malfeasance). Again a judge obliged; a special prosecutor was appointed, a grand jury was convened, and Bianchi and three of his colleagues were indicted on multiple counts of official misconduct. All were acquitted. Once vindicated, Bianchi and his colleagues filed this suit for damages under 42 U.S.C. § 1983 against Henry Tonigan, the court-appointed special prosecutor; Thomas McQueen, the court-appointed assistant special prosecutor; and Quest Consultants International, Ltd., a firm of private investigators hired by the special prosecutors, and several of its investigators. The plaintiffs claim that the defendants fabricated evidence and withheld exculpatory evidence in violation of their rights under the Due Process Clause and the Fourth Amendment. They also allege a claim for political retaliation in violation of the First Amendment. Tonigan settled and dropped out of the case. McQueen and the Quest investigators moved to dismiss based on the combined effect of absolute prosecutorial immunity and qualified immunity. The district court granted the motion, concluding that the two immunities foreclose the federal constitutional claims. That ruling was sound and we affirm.

Stanley Hayes v. FNMA No. 15-3408

Submitted March 28, 2016 — Decided March 30, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 C 6409 — **Robert W. Gettleman**, *Judge*.
Before DIANE P. WOOD, *Chief Judge*;MICHAEL S. KANNE, *Circuit Judge*;DIANE S. SYKES, *Circuit Judge*.

ORDER

Stanley Hayes defaulted on his home mortgage, and in January 2013 an Illinois court entered a judgment of foreclosure in favor of the Federal National Mortgage Association. A judicial sale was conducted, and the state court approved the sale in September 2013. Hayes brought this action in federal court, ostensibly under 42 U.S.C. § 1983, claiming that the Federal National Mortgage Association violated the Constitution of the United States by filing the foreclosure action. The district court dismissed the suit on the defendant's motion... AFFIRMED.

Felix Bruette, Jr. v. Sally Jewell No. 15-2897

Submitted March 28, 2016 — Decided March 30, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 14-C-876 — **William C. Griesbach**, *Chief Judge*.
Before DIANE P. WOOD, *Chief Judge*;MICHAEL S. KANNE, *Circuit Judge*;DIANE S. SYKES, *Circuit Judge*.

ORDER

Felix Bruette appeals from a dismissal of his suit for lack of jurisdiction. In his complaint Bruette sought an order requiring that the Department of the Interior follow an 1893 law involving the Stockbridge and Munsee Indians. At a hearing Bruette clarified his principal demand: He wants the Department to recognize that descendants (including him) of Stephen Gardner, a signor of an 1856 Treaty between the Stockbridge and Munsee Indians and the United States, belong to the tribe recognized in the Treaty. The district court dismissed the suit based on several incurable defects. Because Bruette has not developed an argument to disturb the district court's decision, we dismiss his appeal.

USA v. Leroy Lucas No. 15-2470

Submitted March 28, 2016 — Decided March 30, 2016

Case Type: Criminal

Southern District of Illinois. No. 13-CR-30174-MJR — **Michael J. Reagan**, *Chief Judge*.
Before DIANE P. WOOD, *Chief Judge*;MICHAEL S. KANNE, *Circuit Judge*;DIANE S. SYKES, *Circuit Judge*.

ORDER

Leroy Lucas pleaded guilty to distributing cocaine, see 21 U.S.C. § 841(a)(1), and was sentenced below his calculated guidelines range to 120 months' imprisonment followed by 36 months' supervised release. He filed a notice of appeal, but his appointed attorney asserts that the appeal is frivolous and seeks to withdraw... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

Glenn Verser v. Jeffery Barfield No. 15-2140

Submitted March 28, 2016 — Decided March 30, 2016

Case Type: Prisoner

Central District of Illinois. No. 07-cv-3293 — **Thomas P. Schanzle-Haskins**, *Magistrate Judge*.

Before DIANE P. WOOD, *Chief Judge*;MICHAEL S. KANNE, *Circuit Judge*;DIANE S. SYKES, *Circuit Judge*.

ORDER

Glenn Verser, an Illinois inmate, appeals after a jury found for the defendants on his claim of excessive force brought under 42 U.S.C. § 1983. Verser challenges the use of his discovery deposition to impeach his trial testimony, the district court's handling of the jury poll, and the racial composition of the jury venire. But Verser has not provided us with trial transcripts, which is reason enough to reject the first two contentions, and the third claim is waived because he did not timely object to the venire. We thus affirm the judgment.

Michael Carter v. Stephen Duncan No. 13-2243

Argued April 21, 2015 — Decided March 30, 2016

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 1:10-cv-03783 — **Harry D. Leinenweber**, *Judge*.
Before EASTERBROOK and RIPPLE, *Circuit Judges*,and REAGAN, *District Judge*.
EASTERBROOK, *Circuit Judge*,concurring.

RIPPLE, *Circuit Judge*. On September 12, 1999, Friday Gardner was shot to death in front of an apartment building on the south side of Chicago. The State of Illinois charged three men, including Michael Carter, with Gardner's murder. Mr. Carter was tried alongside his brother, Michael Stone, in a single trial. Both were convicted of murder; Mr. Carter was sentenced to thirty years' imprisonment. Following an unsuccessful state post-conviction proceeding, Mr. Carter filed a pro se petition for habeas corpus in the district court under 28 U.S.C. § 2254. The district court denied relief on each of the eight grounds presented in his petition and also denied a certificate of appealability, see 28 U.S.C. § 2253(c). We granted a certificate as to a single claim—whether Mr. Carter received effective assistance of counsel. We also appointed appellate counsel. Mr. Carter brings to us an ineffective assistance claim. His claim turns on the potential effect of the testimony of two witnesses who were not called in his defense at trial. The Illinois Appellate Court determined that the proffered testimony would not have changed the outcome of the trial. Although the state court's analysis stumbles in some respects, we nevertheless must conclude that its decision was not unreasonable. Accordingly, given our deferential standard of review, we affirm the district court's judgment denying habeas relief to Mr. Carter.

Steven Hill v. City of Chicago No. 15-1963

Argued January 14, 2016 — Decided March 31, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14-cv-02840 — **Charles P. Kocoras**, *Judge*.
Before FLAUM and RIPPLE, *Circuit Judges*,and PETERSON, *District Judge*.

FLAUM, *Circuit Judge*. Plaintiffs Steven Hill and Sean Roberts filed this suit against the City of Chicago alleging discrimination under the Americans with Disabilities Act... Hill and Roberts were both members of the plaintiff-class in *Lewis v. City of Chicago*, which resulted in an order that the Chicago Fire Department ("CFD") hire the first 111 class members to complete the court-mandated hiring process. Plaintiffs completed the hiring process but were never offered positions after they failed their initial medical screenings. In their complaint, plaintiffs allege that the failure to hire them violated the ADA. The district court held that plaintiffs' complaint failed to state a claim for relief. Because their complaint does not adequately allege a violation of the ADA, 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](#).