

Opinions for the week of March 30 – April 3, 2020

Carlos Lindsey v. Stacy Hoem, Gary Boughton Nos. 19-3278 & 19-3311

Submitted March 26, 2020 — Decided March 30, 2020

Case Type: Prisoner

Western District of Wisconsin. No. 19-cv-904-jdp — **James D. Peterson**, *Judge*.

Western District of Wisconsin. No. 19-cv-885-jdp — **James D. Peterson**, *Judge*.

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

ORDER

Carlos Lindsey, a Wisconsin prisoner, brought two suits (which we have consolidated for decision) alleging violations of the Eighth Amendment, but a filing bar blocked him at the courthouse door. In the first suit, he maintains that while he was in solitary confinement, prison psychologists denied him medical care that he needs to prevent self-harm; in the second, he alleges that prison officials have forced him to mix with prisoners who have planned to attack him. Lindsey's filing bar (a sanction from a prior case) allows him to sue only if he alleges that he is in imminent danger of serious physical injury. The district court ruled that he failed to meet that standard in either case, but we conclude that he has, so we vacate the dismissals. But we also warn him that if he has lied, he may face even more onerous sanctions.

USA v. Eleen Arboine No. 19-2460

Submitted March 26, 2020 — Decided March 30, 2020

Case Type: Criminal

Central District of Illinois. No. 18-10042 — **James E. Shadid**, *Judge*.

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

ORDER

In 2016, Eleen Arboine obtained a passport using the maiden name, birthdate, and social security number of one of her friends. Over the next year, she used that passport to obtain several small loans until she was caught and charged with identity theft in state court. But, while that prosecution was pending, Arboine used the passport to obtain yet another loan. She was then charged separately with federal offenses: aggravated identity theft, 18 U.S.C. § 1028A(a)(1), and unlawfully obtaining and using a passport, *id.* § 1542. Without a plea agreement, Arboine pleaded guilty to aggravated identity theft and was sentenced to two years in prison and one year of supervised release. Arboine now appeals from that final judgment. Her lawyer, however, moves to withdraw from the appeal, arguing that it is frivolous. See *Anders v. California*, 386 U.S. 738 (1967). Arboine did not respond to the motion. See CIR. R. 51(b). Counsel's brief explains the nature of the case and addresses the issues that an appeal of this kind might be expected to involve. Because the analysis appears thorough, we limit our review to those issues... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

Orlando Larry v. Russell Goldsmith

Submitted March 19, 2020 — Decided March 30, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 16-cv-1108-pp — **Pamela Pepper**, *Chief Judge*.

Before DANIEL A. MANION, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Orlando Larry, a former Wisconsin inmate and practicing Muslim, sued prison officials for disciplining him after he prayed next to his bunk at a prohibited time. The district court screened his complaint and dismissed all claims except a free-exercise claim under the First Amendment. See 28 U.S.C. § 1915A(a). Later the judge granted the defendants' motion for summary judgment. Because the undisputed facts show that the prison's policy prohibiting bunk-side prayer at night reasonably relates to the legitimate penological interest of maintaining prison order, we affirm.

Iredell Sanders v. Indiana Department of Child Services No. 19-3067

Submitted March 26, 2020 — Decided March 31, 2020

Case Type: Civil

Northern District of Indiana, South Bend Division. No. 3:19-CV-276 DRL-MGG — **Damon R. Leichty, Judge.**

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

ORDER

Iredell Sanders sued the Indiana Department of Child Services under 42 U.S.C. § 1983, alleging that it had interfered with his right to familial integrity, unreasonably investigated him, discriminated against him based on his sex and race, and lied to a state court to keep his children from him. The district court dismissed the case, concluding that Sanders's claims were barred by the Eleventh Amendment. We affirm.

Iredell Sanders v. St. Joseph County, Indiana No. 19-3066

Submitted March 13, 2020 — Decided March 31, 2020

Case Type: Civil

Northern District of Indiana, South Bend Division. No. 3:19-CV-130 DRL-MGG — **Damon R. Leichty, Judge.**

Before FRANK H. EASTERBROOK, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

Iredell Sanders sued St. Joseph County, Indiana, alleging that county officials arrested him, temporarily held him in a cold cell without access to his medication, and then jailed him for several months. The district court construed Sanders's complaint as asserting various claims under 42 U.S.C. § 1983 for denial of his constitutional rights, but it dismissed the complaint as untimely. We agree with the district court that many of Sanders's claims are time-barred, but we conclude that the court erred in dismissing as untimely Sanders's claim of unlawful detention, which accrued later than his other claims. We nonetheless affirm the court's order dismissing the complaint because Sanders named the county as the sole defendant but did not state a claim under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

Matthew King v. Hendricks County Commissioner No. 19-2119

Argued January 9, 2020 — Decided March 31, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:17-cv-04412-JRS-TAB — **James R. Sweeney, II, Judge.**

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

WOOD, *Chief Judge*. Bradley King, a 29-year-old resident of Hendricks County, Indiana, who suffered from paranoid schizophrenia, was killed by a police officer on November 29, 2016, during an encounter at his home. Two Hendricks County reserve deputies went to the Kings' family home to perform a "welfare

check” after Bradley called 9-1-1 and requested help. Matters then spun horribly out of control, though what precisely happened is disputed, aside from the fact that Bradley wound up dead. The only living eyewitnesses are the officers involved. The evidence developed for purposes of the defendants’ motion for summary judgment was as follows... Bradley’s death at the hands of police officers whom he called for help when he was suffering a mental-health crisis is undoubtedly heartbreaking for his family, as well as a sobering reminder about the difficulties of dealing with the mentally ill. Nonetheless, the record before us does not indicate that Hays was deliberately indifferent to Bradley’s disability or that Hendricks County was deliberately indifferent to the needs of community members suffering from mental illness and failed adequately to train officers in how to handle such persons. Finally, there is no evidence that but for alleged discrimination on the basis of his disability, Bradley would still be alive. We therefore conclude that the district court did not err in granting summary judgment to the defendants on the ADA and Rehabilitation Act claims. We AFFIRM the district court’s judgment in all respects.

USA v. Kendal Harris No. 19-1794

Submitted March 30, 2020 — Decided March 31, 2020

Case Type: Criminal

Western District of Wisconsin. No. 0758 3:18CR00131-001 — **William M. Conley**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

Order

Kendal Harris pleaded guilty to possessing a firearm, despite felony convictions that made it unlawful for him to do so. 18 U.S.C. §922(g)(1). While this case was pending on appeal, the Supreme Court held in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), that knowledge of the disqualifying felony conviction is an element of the offense defined by §922(g)(1). Harris asks us to vacate his guilty plea, because before the judge accepted that plea he did not inform him that, at a trial, the prosecution would need to prove that he knew that a prior conviction made it unlawful for him to possess firearms... AFFIRMED

USA v. Kenny B. McCline No. 18-3453

Submitted March 30, 2020 — Decided March 31, 2020

Case Type: Criminal

Southern District of Illinois. No. 3:17-CR-30200-SMY-1 — **Staci M. Yandle**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

Order

Kenny McCline pleaded guilty to possessing a firearm, despite felony convictions that made it unlawful for him to do so. 18 U.S.C. §922(g)(1). While this case was pending on appeal, the Supreme Court held in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), that knowledge of the disqualifying felony conviction is an element of the offense defined by §922(g)(1). McCline asks us to vacate his guilty plea, because before the judge accepted that plea she did not inform him that, at a trial, the prosecution would need to prove that he knew that a prior conviction made it unlawful for him to possess firearms. McCline has not argued, however, that he was unaware of his legal disability, and such an argument would not be plausible. A disqualifying conviction is one “punishable by imprisonment for a term exceeding one year” (§922(g)(1)). McCline has several such convictions, and he actually served more than a year in prison for four of them. He does not contend that he was ignorant of the fact that being sentenced to, and serving, more than a year in prison shows that a sentence exceeding one year was authorized... AFFIRMED

Connan Johnson v. Sheri Piontek No. 19-3010

Submitted March 13, 2020 — Decided April 1, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 19-C-1158 — **William C. Griesbach**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

While confined in the Brown County Jail in Wisconsin, Connan Johnson requested a hearing transcript from court reporter Sheri Piontek of the Brown County Circuit Court. Johnson was dissatisfied with how long the transcript took to reach him, and he believed it was inaccurate, so he sued Piontek and the jail. The district court dismissed Johnson's complaint for failure to state a claim. See 28 U.S.C. § 1915A(b)(1). Because Johnson's allegations do not plausibly suggest that Piontek intentionally altered the transcript or that the defendants' actions prejudiced him in his pending litigation, we affirm.

Diahann Grasty v. Marilyn Marshall No. 19-3199

Submitted April 2, 2020 — Decided April 2, 2020

Case Type: Bankruptcy from District Court

Northern District of Illinois, Eastern Division. No. 19-cv-3044 — **Sharon Johnson Coleman**, *Judge*.
Before DIANE P. WOOD, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

After Diahann Grasty repeatedly failed to make payments required by her bankruptcy plan, the bankruptcy court dismissed her petition for material default. The district court affirmed the dismissal. On appeal, Grasty contends that the bankruptcy court and district court were biased against her and that the bankruptcy court erroneously dismissed her case. Grasty's arguments are meritless, so we affirm.

Larry Harris, Jr. v. Jeffrey Manlove No. 19-2849

Submitted April 2, 2020 — Decided April 2, 2020

Case Type: Prisoner

Western District of Wisconsin. No. 17-cv-362-jdp — **James D. Peterson**, *Chief Judge*.

Before DIANE P. WOOD, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

After he assaulted and bloodied a correctional officer, Wisconsin prisoner Larry Harris consented to undergo a blood draw and testing for HIV. He did not consent, however, to have his blood tested for hepatitis, so when he found out that his blood had been tested for that purpose, he sued two prison health officials. The district court entered summary judgment for the defendants, concluding that qualified immunity shielded them from liability. We agree with the district court and affirm the judgment.

USA v. Dawn Rochon No. 19-2527

Submitted April 2, 2020 — Decided April 2, 2020

Case Type: Criminal

Southern District of Indiana. No. 1:18CR00174-001 — **James R. Sweeney II**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

Dawn Rochon pleaded guilty to making an intentional, false statement when purchasing a firearm. See 18 U.S.C. § 922(a)(6). The district court sentenced her to 13 months' imprisonment—within the sentencing guidelines range of 10 to 16 months— and three years' supervised release. Rochon appeals, but her appointed attorney asserts that the appeal is frivolous and moves to withdraw. See *Anders v. California*, 386 U.S. 738 (1967). We invited Rochon to identify potential issues for appeal, see CIR. R. 51(b), but she did not respond. Because counsel's brief adequately addresses the potential issues that an appeal of this kind might be expected to involve, we limit our review to the subjects that counsel discusses... Given the court's discussion of the relevant sentencing factors already discussed, we agree with counsel that the district court sufficiently justified its sentence. Thus, Rochon would be unable to overcome the presumption of reasonableness or otherwise claim that the court failed to consider any arguments in favor of a lower sentence. We thus GRANT the petition to withdraw and DISMISS the appeal.

Michelle Jeske v. Andrew M. Saul No. 19-1870

Argued December 10, 2019 — Decided April 2, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 1:18-cv-00371 — **William C. Griesbach**, *Judge*.
Before KANNE, SYKES, and BARRETT, *Circuit Judges*.

KANNE, *Circuit Judge*. On Halloween 2012, Michelle Jeske was working at a cemetery as a pallbearer and burial needs salesperson. She was carrying a heavy casket when she stumbled, injuring her back. About four years later, she applied for disability insurance benefits and supplemental security income based on disability; she claimed that back and spine problems, anxiety, depression, and suicidal tendencies made her unable to work. The Commissioner of Social Security denied Jeske's requests, and, after a hearing, an administrative law judge ("ALJ") found Jeske not disabled under the Social Security Act, see 42 U.S.C. §§ 423(d), 1382c(3). Seeking judicial review, Jeske asked a federal district court to set aside the administrative decision. The court upheld the decision instead, and Jeske appealed. She argues that, for a handful of reasons, we should vacate and remand with instructions to return the case to the agency. Because the ALJ's decision applies the proper standards, is supported by substantial evidence, and is sufficiently explained—and because Jeske waived one of her arguments—we affirm.

USA v. John High No. 19-2754

Submitted April 2, 2020 — Decided April 3, 2020

Case Type: Criminal

Western District of Wisconsin. No. 07-cr-91-bbc-1 — **Barbara B. Crabb**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

John High was convicted of possessing a firearm and ammunition while a felon, 18 U.S.C. § 922(g)(1), and he was sentenced to 120 months in prison and three years of supervised release. After the district court revoked High's supervised release once, he was convicted in state court on a new charge of misdemeanor bail jumping, and the district court revoked it again. High appealed, but because we agree with his appointed counsel that the appeal is frivolous, we grant counsel's motion to withdraw and dismiss the appeal.

Eduin Perez-Castillo v. William Barr

Submitted April 2, 2020 — Decided April 3, 2020

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A213-021-626

Before DIANE P. WOOD, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

Eduin Israel Perez-Castillo, a 41-year-old Guatemalan citizen who entered the United States without admission or inspection in 1996, challenges the denial of his application to cancel his removal. He contends that his removal will impose "exceptional and extremely unusual hardship" on his daughter, a U.S. citizen. See 8 U.S.C. § 1229b(b)(1)(D). An immigration judge and then the Board of Immigration Appeals concluded that he did not provide sufficient evidence of hardship. We lack jurisdiction to review his challenge to those discretionary determinations, so we dismiss his petition in part. We deny the remainder of the petition.

Christopher Gish v. Randall Hepp No. 19-1476

Argued November 7, 2019 — Decided April 3, 2020

Case Type: Prisoner

Western District of Wisconsin. No. 3:15-cv-730 — **James D. Peterson**, *Chief Judge*.

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

SCUDDER, *Circuit Judge*. Christopher Gish pleaded guilty to first-degree reckless homicide in Wisconsin state court for killing his longtime girlfriend and the mother of his children. He appealed, claiming that his trial counsel provided ineffective assistance by failing to investigate an involuntary intoxication defense. Police found Gish disoriented and delirious on the night of the killing, and he claimed that rare side effects from taking prescription Xanax affected his ability to appreciate the wrongfulness of his conduct. After the Wisconsin Court of Appeals rejected the claim and affirmed his conviction, Gish turned to federal court and wound his way through a thicket of habeas proceedings. The district court held an evidentiary hearing but denied relief because Gish failed to show that his counsel's deficient performance resulted in prejudice: even if counsel had investigated involuntary intoxication, that defense was so unlikely to succeed that Gish still would have pleaded guilty. 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](#).