

## **Opinions for the week of November 25 – November 29, 2019**

### **USA v. Larry Cochran** No. 19-2213

Submitted November 21, 2019 — Decided November 25, 2019

Case Type: Criminal

Northern District of Indiana, Hammond Division. No. 2:06CR114-001 — **James T. Moody**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*.

### **ORDER**

Larry Cochran, a federal inmate, appeals an order deciding two motions to reduce his sentence under the First Step Act of 2018, Pub. L. 115, 132 Stat. 5194 (2018). Although he received a reduction, Cochran argues that the district court should have reduced his sentence further, principally because, as argued in his second motion, his “debilitating medical condition” justifies immediate compassionate release. See 18 U.S.C. § 3582(c)(1)(A). We affirm in part because the district court permissibly exercised its discretion over the first motion. But we remand so the district court may reconsider Cochran’s request for compassionate release, as it has said it is inclined to do.

### **USA v. Jabri Griffin** No. 19-1998

Argued November 14, 2019 — Decided November 25, 2019

Case Type: Criminal

Eastern District of Wisconsin. No. 18-CR-220-JPS — **J.P. Stadtmueller**, *Judge*.

Before DANIEL A. MANION, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

### **ORDER**

Jabri Griffin was charged with and pleaded guilty to possessing a firearm as a felon. The district court sentenced him to 42 months’ imprisonment, below the Sentencing Guidelines range of 70 to 87 months. Griffin now appeals his sentence, arguing that it reflects the district court’s unfounded speculation that he was engaged in additional criminal activity. He also contends that the court failed to consider a principal mitigation argument. But Griffin forfeited his argument about the speculative statement, and he cannot demonstrate that the district court plainly erred. Further, the district court adequately considered Griffin’s arguments in mitigation. We therefore affirm the judgment.

### **Rafeal D. Newson v. Superior Court of Pima County** No. 19-1571

Submitted November 21, 2019 — Decided November 25, 2019

Case Type: Prisoner

Eastern District of Wisconsin. No. 19-C-219 — **William C. Griesbach**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*.

### **ORDER**

Rafeal Newson was convicted of first-degree intentional homicide and sentenced to life in prison after he was extradited from Arizona, where he was incarcerated, to Wisconsin pursuant to a detainer. Almost twenty years after his conviction, he sued the Superior Court of Pima County, Arizona and the Milwaukee County Circuit Court for violating the Interstate Agreement on Detainers Act, 18 U.S.C. app. 2, § 2, during his extradition. At screening, the district court ruled that it lacked subject-matter jurisdiction over the case, which Newson framed as a breach-of-contract suit, because the parties were not completely diverse. See 18 U.S.C. § 1332(a). Because Newson’s complaint fails to state a valid claim for relief, and any attempt at amendment would be futile, we affirm the district court’s dismissal.

**USA v. Carleous Clay** No. 19-1223

Argued November 14, 2019 — Decided November 25, 2019

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 15-CR-00576(1) — **Virginia M. Kendall**, *Judge*.  
Before MANION, KANNE, and SYKES, *Circuit Judges*.

PER CURIAM. Carleous Clay challenges his within-guide-lines life sentence as unreasonable. He pled guilty to kidnapping a woman, setting her afire, and leaving her to die. In a plea agreement, he also admitted for sentencing purposes that, while he was in pretrial detention in jail for those charges, he held a case worker hostage and threatened to kill her. Clay argues that he is entitled to a new sentencing hearing because the district judge based his sentence solely on aggravating factors and ignored his acceptance of responsibility. Because the district judge adequately justified the sentence based on the statutory sentencing factors, we affirm the judgment.

**USA v. Pete Earl Taylor** No. 18-3661

Submitted November 21, 2019 — Decided November 25, 2019

Case Type: Criminal

Central District of Illinois. No. 1:18-cr-10020-JES-JEH-1 — **James E. Shadid**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*.

**ORDER**

Pete Taylor, a federal inmate, pleaded guilty to possessing a contraband weapon, 18 U.S.C. § 1791 (a)(2), (d)(1)(B), and a prohibited object (six grams of an unidentified green, leafy substance in a package labeled “Next Generation Herbal Potpourri”). 18 U.S.C. § 1791 (a)(2), (d)(1)(G). He was sentenced to 27 months’ imprisonment on the first count to run concurrently with six months’ imprisonment on the second. Taylor appealed, but his lawyer now moves to withdraw from the appeal, arguing that it is frivolous. See *Anders v. California*, 386 U.S. 738 (1967). Counsel’s brief explains the nature of the case and addresses the issues that an appeal of this kind might be expected to raise. Because the analysis appears thorough, we limit our review to those issues... Counsel’s motion to withdraw is GRANTED, and the appeal is DISMISSED.

**USA v. Dexter Fisher** No. 18-2765

Argued September 10, 2019 — Decided November 25, 2019

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:15-cr-00157-1 — **Jane Magnus-Stinson**, *Chief Judge*.

Before WOOD, *Chief Judge*, and KANNE and BRENNAN, *Circuit Judges*.

KANNE, *Circuit Judge*. In the late summer and fall of 2014, multiple pharmacies in Indianapolis were robbed at gun point. Police eventually arrested Dexter Fisher, who was later charged with nine offenses for his involvement in three of the robberies. A jury found Fisher guilty of Hobbs Act robbery, brandishing a firearm during a crime of violence, and being a felon in possession of a firearm. The district court then imposed a sentence, which included conditions of supervised release and an order that Fisher forfeit the firearm used in his offenses. Fisher appealed his convictions for brandishing a firearm, the forfeiture of his firearm, and parts of his sentence relating to supervised release. Only one alleged error needs correction: an inconsistency between the oral sentence and the written judgment, regarding whether terms of supervised release attach to certain counts. We remand with specific instructions to correct that portion of the written judgment.

**Jonathan Vidlak v. Justin Cox** Nos. 19-1921 & 19-2231

Submitted November 21, 2019 — Decided November 26, 2019

Case Type: Prisoner

Southern District of Illinois. No. 17-CV-160-JPG-GCS — **J. Phil Gilbert**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*.

**ORDER**

Jonathan Vidlak, a federal inmate, sued Justin Cox, his supervisor at an electrical shop in prison, for violating the Eighth Amendment. See *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Vidlak contends that Cox was deliberately indifferent to an unreasonable risk of serious injury when he ordered a team of prisoners to crush fluorescent bulbs containing mercury in an unventilated room. The district court granted summary judgment for Cox. Because Vidlak presented no evidence that Cox knew of an unreasonable risk of serious injury, we affirm.

**Linda Waldon v. Wal-Mart Stores, Inc.** No. 19-1529

Argued September 25, 2019 — Decided November 26, 2019

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:17-cv-03673-JRS-MPB — **James R. Sweeney, II**, *Judge*.

Before RIPPLE, ROVNER, and BRENNAN, *Circuit Judges*.

BRENNAN, *Circuit Judge*. While shopping at a Wal-Mart store, Linda Waldon believes she slipped on a plastic hanger and fell causing her injuries. Under Indiana premises-liability law, a defendant must have actual or constructive knowledge of a condition on the premises that involves an unreasonable risk of harm to an invitee. After discovery, the district court concluded there was no evidence Wal-Mart knew of such a condition and granted it summary judgment. We review this decision, and we consider whether photographs the Waldons rely on to show store conditions have been intentionally altered, requiring sanctions against the Waldons' counsel... We order Waldons' counsel, James E. Ayers, to show cause within 14 days of the date of this decision why he should not be sanctioned under Rule 46 of the Federal Rules of Appellate Procedure for altering the photographs and misrepresenting the record to this court. Additionally, after considering Waldons' counsel's response, we will decide whether to forward a copy of this opinion to the Indiana Supreme Court Disciplinary Commission for it to consider whether to institute disciplinary proceedings against him. AFFIRMED WITH ORDER TO SHOW CAUSE

**USA v. Marvin Davis** No. 19-1419

Submitted November 21, 2019 — Decided November 26, 2019

Case Type: Criminal

Central District of Illinois. No. 4:16-cr-40048 — **Sara Darrow**, *Chief Judge*.

Before DIANE P. WOOD, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*.

**ORDER**

Marvin Davis pleaded guilty to intentionally making a false statement when purchasing a firearm. The district court sentenced him to 48 months' imprisonment— above the Sentencing Guidelines range of 21 to 27 months—and three years' supervised release. Davis appeals, but his appointed attorney asserts that the appeal is frivolous and moves to withdraw. See *Anders v. California*, 386 U.S. 738 (1967). We invited Davis to identify potential issues for appeal, CIR. R. 51(b), but he did not respond. Because counsel's brief thoroughly addresses the issues that an appeal of this kind might be expected to involve,

we limit our review to the subjects that counsel discusses... We GRANT counsel's motion to withdraw and DISMISS the appeal.

**Patrick Dunn v. Andrew M. Saul** No. 19-1399

Argued November 13, 2019 — Decided November 26, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17-cv-8068 — **Jeffrey T. Gilbert**, *Magistrate Judge*.  
Before WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y.  
SCUDDER, *Circuit Judge*.

**ORDER**

Patrick Dunn seeks Social Security disability benefits, claiming that he became disabled from memory loss in September 2012 at age 58. Before 2012, he worked at various jobs, including as a bank manager and in retail sales. But his employment records show that he struggled with memory loss and headaches that impeded his job performance until he could no longer work. An administrative law judge denied Dunn's application for disability benefits on the ground that his cognitive limitations were not "severe," and the district court affirmed. We cannot conclude that substantial evidence supports the ALJ's decision. Foremost, the ALJ altogether failed to consider Dunn's employment records and did not explain why he rejected testimony about how Dunn's memory struggles affected his daily activities and social interactions... We therefore VACATE the judgment and REMAND to the agency for further proceedings.

**Shirlena Barnes v. City of Centralia** No. 19-1377

Argued September 10, 2019 — Decided November 26, 2019

Case Type: Civil

Southern District of Illinois. No. 3:17-cv-01366-NJR-RJD — **Nancy J. Rosenstengel**, *Judge*.  
Before WOOD, *Chief Judge*, and KANNE and BRENNAN, *Circuit Judges*.

BRENNAN, *Circuit Judge*. While arresting gang members in Centralia, Illinois, police officer Michael Peebles felt intimidated when Shirlena Barnes, a city resident with gang connections, drove up and yelled derogatory epithets. Later, Barnes posted statements on social media that Peebles believed threatened him and his family. As a private citizen, Peebles submitted a complaint to the police department and participated no further. After a police investigation, Barnes was arrested, and a criminal prosecution followed. The state later dismissed the charges, and Barnes sued Peebles and the City of Centralia asserting her civil rights were violated. The district court granted summary judgment to the officer and the city, which we affirm.

**Ahmed Mohamed v. WestCare Illinois, Inc.** No. 19-1310

Submitted November 21, 2019 — Decided November 26, 2019

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 17 C 07492 — **Virginia M. Kendall**, *Judge*.  
Before DIANE P. WOOD, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION,  
*Circuit Judge*.

**ORDER**

Ahmed Mohamed, a former inmate at Cook County Jail, sued jail employees for violating the Eighth and Fourteenth Amendments by failing to protect him from another inmate's attack. Mohamed did not identify any of these employees by name. Three years after the attack, and after his retained counsel, Robert Ryan Arroyo, conceded that he had not used discovery to ascertain their names, the district court granted motions for a judgment on the pleadings. Because the court correctly reasoned that the defense of the two-year statute of limitations blocked Mohamed's federal claims, we affirm.

**Richard Holman v. Andrew Tilden** No. 18-3688

Submitted November 21, 2019 — Decided November 26, 2019

Case Type: Prisoner

Central District of Illinois. No. 14-1439-HAB — **Harold A. Baker**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*.

**ORDER**

Richard Holman, an Illinois inmate, sued his prison doctor and Wexford Health Services under 42 U.S.C. § 1983, alleging that he received constitutionally inadequate medical care pursuant to a Wexford policy. The district court entered summary judgment for the defendants, concluding that the doctor was not deliberately indifferent to Holman's serious medical condition in violation of the Eighth Amendment and that, therefore, Wexford was not liable either. We affirm.

**Rex Frederickson v. Tizoc Landeros** No. 18-1605

Argued November 6, 2018 — Decided November 26, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 11 C 3484 — **Thomas M. Durkin**, *Judge*.

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

EASTERBROOK, *Circuit Judge*, dissenting.

WOOD, *Chief Judge*. The Equal Protection Clause of the Fourteenth Amendment requires that state actors have, at a minimum, a rational basis for treating similarly situated people differently. Rex Frederickson alleges that Officer Tizoc Landeros prevented him from updating his Illinois sexual offender registration and otherwise used his official position to harass Frederickson purely out of personal dislike. Without an updated registration, Frederickson was unable to move from Joliet, Illinois, to nearby Bolingbrook. The district court found that Frederickson had put forth enough evidence to allow a jury to find that Landeros had singled Frederickson out for unfavorable treatment, and that in so doing Landeros was motivated solely by personal animus and thus lacked a rational basis for his actions... Frederickson did not cross-appeal from the latter two findings, and so we need not address them. Landeros filed a timely appeal from the partial denial of qualified immunity. We conclude that the district court's order must be affirmed.

**Scott Schmidt v. Walworth County, Wisconsin** No. 19-2032

Submitted November 21, 2019 — Decided November 27, 2019

Case Type: Civil

Eastern District of Wisconsin. No. 19-C-0099 — **Lynn Adelman**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*.

**ORDER**

Scott Schmidt appeals the denial of his costs and expenses as part of an otherwise successful motion to remand his case to state court. See 28 U.S.C. § 1447(c). His complaint invokes Wisconsin law, as well as 42 U.S.C. § 1983 and several clauses of the United States Constitution. Because the purported federal claims gave the defendants a reasonable basis to seek removal, the district court reasonably denied Schmidt his costs and expenses, so we affirm.

**Monette Saccameno v. U.S. Bank National Association** No. 19-1569

Argued September 16, 2019 — Decided November 27, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:15-cv-01164 — **Joan B. Gottschall**, *Judge*.  
Before BAUER, BRENNAN, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Chapter 13 bankruptcy is a promise to a debtor: if you comply with the bankruptcy plan, then you can get a fresh start. That promise went unfulfilled for Monette Saccameno. She had done everything that was required of her: she cured the delinquencies in her mortgage and made 42 monthly mortgage payments under the court's watchful eye. Near the end of her bankruptcy, she obtained statements from her mortgage servicer, Ocwen Loan Servicing, LLC, that she was paid up—that she was paid ahead even. The court granted her a discharge. Ocwen, however, immediately began trying to collect money that it was not owed and threatening foreclosure. No problem, Saccameno thought, it must be a simple mistake. She sent Ocwen all the paperwork it could have needed to fix its records. When that did not work, she sent it again. Then she sent it a third and fourth time, with a request from an acquaintance, a lawyer, for an explanation why Ocwen thought she owed money. Ocwen did not explain. Ocwen did not care. Ocwen did not truly grasp how wrong its records were until almost four years later, two days into Saccameno's jury trial when its witness was testifying. It is little wonder, then, that the jury awarded Saccameno substantial damages for the pain, frustration, and emotional torment Ocwen put her through. The jury ordered Ocwen to pay \$500,000 in compensatory damages based on three causes of action that could not support punitive damages. A fourth claim, under the Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA), 815 ILCS 505/1, did allow punitive damages, and for that claim the jury awarded them to the tune of \$3,000,000, plus compensatory damages of an additional \$82,000. Ocwen challenged this verdict on a variety of grounds, but the district court upheld the verdict in its entirety. On appeal, Ocwen has limited its arguments to the punitive damages award, which it contends was not authorized by Illinois law and is so large that it deprives the company of property without due process of law. We agree with the district court that the jury was well within its rights to punish Ocwen. We must, however, conclude that the amount of the award is excessive. We therefore remand to the district court to amend the judgment.

**USA v. Shawn Dewitt** No. 19-1295

Argued September 25, 2019 — Decided November 27, 2019

Case Type: Criminal

Northern District of Indiana, South Bend Division. No. 3:17-cr-110 — **Jon E. DeGuilio**, *Judge*.  
Before FLAUM, SYKES, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Trials often require jurors, as lay- people considering evidence, to draw inferences based on their life experiences. The duty is most unenviable in cases requiring jurors to view images of child sexual abuse. After doing so in Shawn Dewitt's trial, the jury found him guilty of child pornography offenses. Dewitt argues the government's evidence was insufficient because the jury heard no expert testimony (from a medical doctor, for example) about the age of girls depicted in images sent from his cellphone. While some cases may present close calls that benefit from expert evidence, this one does not. The jury heard and saw more than enough to make a reliable finding that Dewitt possessed, produced, and distributed images of children. We affirm.

**USA v. Ruben Porraz** No. 18-3545

Argued September 13, 2019 — Decided November 27, 2019

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 16 CR 463-7 — **Virginia M. Kendall**, *Judge*.  
Before BAUER, ROVNER, and SYKES, *Circuit Judges*.

SYKES, *Circuit Judge*. Ruben Porraz was the leader of a Chicago chapter of the Latin Kings gang for about four years. In 2018 he pleaded guilty to participating in a racketeering conspiracy in violation of the

Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961– 1968. The district judge applied the base offense level for conspiracy to commit murder, factored in Porraz’s criminal history, and sentenced him to 188 months in prison. Porraz argues that his sentence was procedurally defective because he didn’t kill anyone and murder wasn’t a reasonably foreseeable part of the conspiracy. He also claims his sentence was substantively unreasonable because of unwarranted disparities between his sentence and sentences imposed on other Latin Kings members. We affirm. Porraz’s admitted conduct defeats his claim that murder was not a reasonably foreseeable part of his gang activities. And the judge considered and responded to his disparity arguments.

**Raymond Sease v. Lawrence Darko** No. 18-2284

Argued November 13, 2019 — Decided November 27, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15-cv-877 — **John Z. Lee**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

### **ORDER**

Raymond Sease sued two Chicago police officers under 42 U.S.C. § 1983 for falsely arresting and unreasonably searching him eight years earlier. The district court found Sease’s claims untimely and entered summary judgment in favor of the officers. The court also denied Sease’s motion to reconsider. Sease’s appeal is timely only with regard to the denial of his postjudgment motion, which the district court appropriately denied, so we affirm.

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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](#)