

## **Opinions for the week of November 30 - December 4, 2020**

### **Heide Noonan v. Andrew Saul** No. 19-3110

Argued October 6, 2020 — Decided November 30, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 18-CV-641 — **Nancy Joseph**, *Magistrate Judge*.

Before DIANE P. WOOD, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y.

SCUDDER, *Circuit Judge*.

### **ORDER**

Heide Noonan applied for disability insurance benefits based on a variety of health problems, including diabetes, neuropathy, lupus, and depression. An administrative law judge denied her application on the ground that Noonan remained able to perform sedentary work with certain limitations. The district court upheld the determination, and Noonan now appeals. Although our review proceeds under the deferential substantial evidence standard, we conclude a remand is warranted to allow the ALJ to more fully consider whether the effects and limitations of Noonan's neuropathy leave her unable even to perform sedentary work. The ALJ's prior determination took little to no stock of Noonan's own account of her neuropathy-related conditions and that deficiency leaves us with insufficient confidence that the denial of benefits rooted itself in substantial evidence.

### **Rico Sanders v. Scott Eckstein** No. 19-2596

Argued September 23, 2020 — Decided November 30, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 2:11-cv-868 — **Lynn Adelman**, *Judge*.

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

SCUDDER, *Circuit Judge*. Rico Sanders received a 140-year sentence for raping four women. He was 15 at the time of the sexual assaults, and his offense conduct was heinous and cruel in the extreme. Now 40 years old, Sanders will first become eligible for parole under Wisconsin law in 2030. He sought post-conviction relief in state court, arguing that Wisconsin's precluding him from any meaningful opportunity of parole before 2030 offends the Supreme Court's holding in *Graham v. Florida*, 560 U.S. 48 (2010). Sanders later added a claim that the sentencing court's failure to meaningfully consider his youth and prospect of rehabilitation when imposing the 140-year sentence runs afoul *Miller v. Alabama*, 567 U.S. 460 (2012). After the Wisconsin courts rejected these claims, Sanders invoked 28 U.S.C. § 2254 and sought relief in federal court. The district court denied the application, and we now affirm.

### **USA v. Travis Barrett** No. 19-2254

Argued October 6, 2020 — Decided November 30, 2020

Case Type: Criminal

Northern District of Indiana, Hammond Division. No. 2:17-cr-00001 — **Joseph S. Van Bokkelen**, *Judge*.

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

SCUDDER, *Circuit Judge*. In *United States v. Flores*, we addressed ambiguity in our case law by announcing a clear and precise rule for resolving the all-too-common circumstance of a criminal defendant contending for the first time on appeal that a condition of supervised release is unconstitutionally vague, despite having received notice of all proposed conditions before sentencing and then availing himself of the opportunity to object to other conditions. We held such a course of action constitutes waiver, rendering the challenge unreviewable on appeal. This principle requires us to affirm Travis Barrett's sentence here.

**Alfred Bourgeois v. T.J. Watson** No. 20-1891

December 1, 2020

Case Type: Prisoner

On Petition for Rehearing and Rehearing En Banc

Southern District of Indiana, Terre Haute Division. No. 2:19-cv-00392-JMS-DLP — **Jane Magnus-Stinson**, *Chief Judge*.

Before SYKES, *Chief Judge*, EASTERBROOK, KANNE, ROVNER, WOOD, HAMILTON, BRENNAN, SCUDDER and ST. EVE, *Circuit Judges*.

WOOD and ROVNER, *Circuit Judges*, dissenting.

PER CURIAM. On consideration of petitioner-appellee's petition for panel rehearing or rehearing en banc, filed on October 13, 2020, the judges on the original panel have voted to deny rehearing. A judge in regular active service requested a vote on the petition for rehearing en banc. A majority of judges in regular active service voted to deny the petition for rehearing en banc.

**William Pangman v. Keith Sellen** No. 20-1634

Argued November 18, 2020 — Decided December 1, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 19-C-1615 — **Lynn Adelman**, *Judge*.

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

**ORDER**

William Pangman sued two employees of Wisconsin's Office of Lawyer Regulation ("OLR") under 42 U.S.C. §1983 for alleged violations of his constitutional rights that occurred during an investigation into whether to reinstate his license to practice law. Shortly after Pangman filed this suit, the Wisconsin Supreme Court denied his petition for reinstatement. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. Because Pangman filed his suit before the state-court judgment was entered, the *Rooker-Feldman* doctrine does not deprive this court of jurisdiction. But the judge correctly determined that Pangman did not state a claim, so we affirm.

**USA v. Timothy Dorsey** No. 20-1119

Submitted November 18, 2020 — Decided December 1, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:17-CR-00299(1) — **John J. Tharp, Jr.**, *Judge*.

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

**ORDER**

Timothy Dorsey operated a sex-trafficking ring in which his workers, adult men, would perform sexual acts on customers during erotic massages. He pleaded guilty to two counts of knowingly transporting individuals across state lines to engage in prostitution in violation of 18 U.S.C. § 2421. The judge sentenced him to 120 months in prison. Dorsey appeals and argues that his sentence, which exceeded the high end of the Guidelines range by 79 months, is substantively unreasonable. The judge appropriately found the Sentencing Guidelines "grossly inadequate" to represent the objectives of 18 U.S.C. § 3553(a) and reasonably justified the above-Guidelines sentence, so we affirm.

**Kevin Lacher v. Andrew Saul** No. 20-1035

Argued November 18, 2020 — Decided December 1, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 18-CV-941 — **Nancy Joseph**, *Magistrate Judge*.

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

## ORDER

Kevin Lacher, a 55-year-old man suffering from sustained back pain and limited mobility, challenges the denial of his application for disability insurance benefits. An administrative law judge found that Lacher had the residual functional capacity to perform sedentary work with some limitations. On appeal, Lacher contends that the ALJ erred by (1) not assigning enough weight to his treating physician's opinion and (2) discounting his subjective complaints. Because substantial evidence supports the ALJ's determination that Lacher was not disabled, we affirm.

**James Donald v. Wexford Health Sources, Inc.** No. 19-3038

Argued October 2, 2020 — Decided December 1, 2020

Case Type: Prisoner

Central District of Illinois. No. 16-1481 — **James E. Shadid**, *Judge*.

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

KANNE, *Circuit Judge*. When James Donald entered prison, he had two eyes. Now he has one. The immediate cause of the loss of his left eye was an aggressive bacterial infection, but Donald argues that the substandard care of two prison doctors is to blame. He sued the doctors (and one of their employers) for deliberate indifference under the Eighth Amendment and medical malpractice under Illinois law. The district court granted summary judgment in favor of the defendants on the federal claims and one of the malpractice claims. It then relinquished jurisdiction over the remaining state-law claims. We agree that summary judgment was proper because (1) the undisputed evidence shows that the defendants did not act with deliberate indifference toward an objectively serious medical condition and (2) the district court appropriately exercised supplemental jurisdiction to dispose of the malpractice claim. We therefore affirm the district court.

**Kathryn Harris v. Andrew Saul** No. 20-1687

Argued November 17, 2020 — Decided December 3, 2020

Case Type: Civil

Southern District of Illinois. No. 19-cv-870-DGW — **Donald G. Wilkerson**, *Magistrate Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

## ORDER

Kathryn Harris, a 50-year-old woman suffering from mental illnesses and anxiety, challenges the denial of her application for disability insurance benefits. She argues that the administrative law judge failed to develop the record, misevaluated the medical opinions, and wrongly discounted her statements about the limiting effects of her symptoms. But because substantial evidence supports the ALJ's conclusion, we affirm the judgment.