

Opinions for the week of November 7 - November 10, 2016

USA v. James McKenzie No. 16-2399

Submitted November 1, 2016 — Decided November 8, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 08 CR 720-2 — **Virginia M. Kendall**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

ORDER

James McKenzie filed a motion to reduce his sentence under 18 U.S.C. §3582(c)(2). The motion invoked Amendment 782 to the Sentencing Guidelines. The district court granted this motion and on May 21, 2015, cut McKenzie's sentence from 200 to 195 months. McKenzie believed he is entitled to a greater reduction but did not appeal. Instead he waited almost eight months and filed on February 8, 2016, what he styled a "Request under Rule 59(e) for Reconsideration". This appears to refer to Fed. R. Civ. P. 59(e), which does not apply in criminal cases and even if this were a civil case the motion would have been seven months beyond the deadline. The district court denied this motion on February 18. Again McKenzie did not appeal. But on February 25 he filed another motion for reconsideration, this time nominally under Fed. R. Civ. P. 60(b), which no more applies in criminal cases than does Civil Rule 59(e). The district court denied this motion on May 20, and eleven days later McKenzie filed a notice of appeal... The district court's decision of May 20 therefore is affirmed.

Leora Bell v. City of Country Club Hills Nos. 16-1245 and 16-1448

Argued September 13, 2016 — Decided November 8, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 C 4227 — **James B. Zagel**, *Judge*.

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

BAUER, *Circuit Judge*. Plaintiff-appellant, Leora H. Bell, filed suit against Defendant-appellee, City of Country Club Hills, claiming a deprivation of her constitutional rights in violation of 42 U.S.C. § 1983. Bell's claims arise from the City's decision to repeal an ordinance that provided a twenty-five percent tax rebate to qualifying homeowners. The district court granted the City's motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), holding that the tax rebate did not confer a vested property right upon Bell. Bell appeals, arguing that she maintains a vested property right in the rebate program, and that the City unlawfully repealed the ordinance. For the reasons stated below, we affirm.

USA v. Monta Anderson No. 16-1457

Submitted November 9, 2016 — Decided November 9, 2016

Case Type: Criminal

Central District of Illinois. No. 13-CR-10064-001 — **Michael M. Mihm**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Monta Anderson appeals from the denial of his postjudgment motion seeking to rescind his guilty plea to conspiracy to distribute heroin. See 21 U.S.C. §§ 846, 841(a)(1). We affirm that decision.

USA v. Ronald Bohn No. 15-3863

Submitted November 9, 2016 — Decided November 9, 2016

Case Type: Criminal

Northern District of Indiana, South Bend Division. No. 3: 12CR063-001 — **Robert L. Miller, Jr.**, *Judge*.
Before DIANE P. WOOD, *Chief Judge*;JOEL M. FLAUM, *Circuit Judge*;DIANE S. SYKES, *Circuit Judge*.

ORDER

Ronald Bohn pleaded guilty to one count of possessing a stolen firearm, 18 U.S.C. § 922(j), and was sentenced to 110 months' imprisonment, ten months below the statutory maximum. Although his plea agreement included a broad appeal waiver, Bohn appealed. His appointed lawyer asserts that the appeal is frivolous and seeks to withdraw... We GRANT counsel's motion to withdraw and DISMISS the appeal.

USA v. Anna Novak John Morrison Nos. 15-3589 & 15-3601

Argued September 28, 2016 — Decided November 9, 2016

Case Type: Criminal

Western District of Wisconsin. No. 14-cr-121 — **James D. Peterson**, *Judge*.

Before POSNER, FLAUM, and MANION, *Circuit Judges*.

FLAUM, *Circuit Judge*. Defendants-appellants John Morrison and Anna Novak both pled guilty to distributing a controlled substance analog and to tax fraud. The district court accepted their guilty pleas and later sentenced Morrison to forty-eight months of incarceration and Novak to ninety-six months. They now appeal, challenging the constitutionality of the Controlled Substances Analogue Act, 21 U.S.C. § 813 (the Analogue Act), the district court's acceptance of their guilty pleas, and their sentences. We affirm.

Debra Foster v. Carolyn Colvin No. 16-1908

Submitted November 9, 2016 — Decided November 10, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 04690 — **Geraldine Soat Brown**, *Magistrate Judge*.

Before DIANE P. WOOD, *Chief Judge*;JOEL M. FLAUM, *Circuit Judge*;DIANE S. SYKES, *Circuit Judge*.

ORDER

In this employment-discrimination suit, Debra Foster appeals from the grant of summary judgment for her former employer, the Social Security Administration. Foster asserted that she was subjected to disparate treatment and a hostile work environment because of her race, gender, and disability, see 42 U.S.C. § 2000e (Title VII) and 29 U.S.C. § 791 (the Rehabilitation Act), and that she suffered retaliation for complaining to a training coordinator about an instructor and for filing an EEO complaint. The magistrate judge determined that no reasonable jury could find in her favor on any of her claims. We affirm.

Timothy Hoeller v. SSA No. 16-1876

Submitted November 9, 2016 — Decided November 10, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 15-C-1553 — **C.N. Clevert, Jr.**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*;JOEL M. FLAUM, *Circuit Judge*;DIANE S. SYKES, *Circuit Judge*.

ORDER

Timothy Hoeller seeks documents from the Social Security Administration under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, but the district court dismissed this suit because Hoeller failed to exhaust his administrative remedies before suing. Hoeller filed a post-judgment motion to reconsider, arguing that after he filed suit he had exhausted, but the district court denied that motion. Hoeller timely appealed only the denial of his post-judgment motion, and so we limited his appeal to that decision. Because the district court did not abuse its discretion in denying that motion, we affirm.

USA v. Jerrod Patterson No. 16-1414

Submitted November 9, 2016 — Decided November 10, 2016

Case Type: Criminal

Eastern District of Wisconsin. No. 15-CR-74-4-JPS — **J. P. Stadtmueller**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

For several years Jerrod Patterson conspired with other Gangster Disciples to sell heroin and other drugs in Kenosha, Wisconsin. Federal authorities broke up the ring in early 2015, but Patterson fled and remained a fugitive for almost six months. After he was caught, Patterson pleaded guilty to distributing heroin, 21 U.S.C. § 841(a)(1), and was sentenced below the guidelines' imprisonment range to 125 months to be followed by three years of supervised release. Patterson filed a notice of appeal, but his appointed attorney moves to withdraw on the ground that the appeal is frivolous... Counsel's motion to withdraw is GRANTED and the appeal is DISMISSED.

Joseph Ward, II v. John Hoffman No. 15-2678

Submitted November 9, 2016 — Decided November 10, 2016

Case Type: Prisoner

Southern District of Illinois. No. 3:14-cv-00509-MJR-SCW — **Michael J. Reagan**, *Chief Judge*.

Before DIANE P. WOOD, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Joseph Ward, an Illinois prisoner, brought this suit under 42 U.S.C. § 1983, asserting that John Hoffman, a prison supervisor, used excessive force by choking him until he lost consciousness while two on-looking guards failed to intervene. The district court granted summary judgment for the officers, concluding that Ward failed to exhaust his administrative remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). We affirm.

Lee Momient v. Northwest Collectors, Inc. No. 15-2205

Submitted November 9, 2016 — Decided November 10, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13cv2140 — **James B. Zagel**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Lee Momient brought this action after the defendant, Northwest Collectors, demanded payment on bills from an Evanston, Illinois, hospital. In the lawsuit Momient claims that Northwest's efforts violated federal and state law, but after discovery, and with the company's motion for summary judgment still pending, the district court dismissed the action from the bench. The basis for that decision is unclear; like the parties, we cannot tell if the dismissal rests on the motion for summary judgment or instead penalizes Momient for a perceived failure to prosecute the lawsuit. Regardless, we conclude that the court erred in dismissing Momient's principal claims, which arise under the Telephone Consumer Protection Act, 47 U.S.C. § 227, and the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692–1692p. We remand those claims for trial.

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](#).