

Opinions for the week of November 9 – November 13, 2020

USA v. Lindani Mzembe No. 20-1265

Submitted July 8, 2020 — Decided November 9, 2020

Case Type: Criminal

Northern District of Indiana, South Bend Division. No. 3:15-cr-00087-RLM-MGG-2 — **Robert L. Miller, Jr., Judge.**

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

HAMILTON, *Circuit Judge*. This appeal presents several related issues about how federal judges should decide whether sentences in federal prosecutions should run consecutively to or concurrently with separate sentences in unrelated state prosecutions. The issues arise in an unusual way in this case because the state court had already decided to impose a long sentence consecutive to the federal offender's federal sentence. Intervening changes in federal law then required resentencing in federal court, where the consecutive v. concurrent question could be revisited. The defendant-appellant argues that, in refusing to make the new federal sentence concurrent with the intervening state sentence, the district judge erred (a) by giving an inadequate explanation for his decision, (b) by deferring to the state court's intervening judgment to make the sentences consecutive, and (c) by imposing an unreasonably severe sentence that is a de facto life sentence. We find no reversible error, so we affirm the new federal sentence.

Tai Matlin v. Spin Master Corp. Nos. 20-1039 & 20-1049

Argued September 24, 2020 — Decided November 10, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17-cv-7706 — **Virginia M. Kendall, Judge.**

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

KANNE, *Circuit Judge*. Plaintiffs Tai Matlin and James Waring have spent seventeen years embroiled in disputes related to the intellectual property claims at issue in this case. In that time, arbitrators have sorted out many aspects of this IP kerfuffle, including that a company called Gray Matter is on the hook alone for paying certain royalties to Matlin and Waring. So, in 2017, when Matlin and Waring filed the suit now on appeal seeking those royalties from companies other than Gray Matter, they knew—or should have known—that they had a loser on their hands. And the district court recognized as much by sanctioning Matlin and Waring and ordering them and their former counsel, Stoltmann Law Offices, to pay certain costs and fees expended by Defendants Swimways and Spin Master. Accordingly, we affirm the district court's decision granting costs and fees to Swimways and Spin Master in the amount of \$271,926.92. We also deny Appellees' motion for sanctions under Federal Rule of Appellate Procedure 38.

Asher Hill v. Christopher Nicholson No. 20-2460

Submitted November 10, 2020 — Decided November 12, 2020

Case Type: Prisoner

Southern District of Indiana, Terre Haute Division. No. 2:20-cv-00094-JRS-DLP — **James R. Sweeney II, Judge.**

Before DIANE S. SYKES, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Asher Hill, an Indiana inmate, sued Officer P. Stump and others at Wabash Valley Correctional Facility, alleging that Stump violated the Eighth Amendment by maliciously shutting off available hot water when

Hill showered and turning off hot sink water to his cold cell for over one year. See 42 U.S.C. § 1983. The district court dismissed his suit at screening. Because Hill's complaint states a claim that Stump's actions were "cruel and unusual," we vacate and remand; we otherwise affirm.

USA v. Darnell W. Moon No. 20-221

Submitted November 10, 2020 — Decided November 12, 2020

Case Type: Criminal

Western District of Wisconsin. No. 09-cr-135-bbc — **Barbara B. Crabb**, *Judge*.

Before DIANE S. SYKES, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

After filing fraudulent tax returns on behalf of fellow inmates, Darnell Moon pleaded guilty to making false claims to the Internal Revenue Service in violation of 18 U.S.C. § 287. The district court sentenced him to fourteen months in prison, imposed a criminal-assessment penalty of \$100, and fined him \$500. Earlier this year, Moon filed two motions to suspend payments on the criminal-assessment penalty and the fine. The district court denied both motions as outside the scope of the statute. See 18 U.S.C. §§ 3572(c), 3573. Twenty-five days after the last denial, Moon filed a notice of appeal. Even though his appeal was filed beyond the 14-day deadline, see FED. R. APP. P. 4(b), we agreed to proceed to a disposition because the prescribed deadline to file a notice of appeal in a criminal case is a non-jurisdictional claim-processing rule... DISMISSED

USA v. Jawanza Williams No. 20-1947

Submitted November 10, 2020 — Decided November 10, 2020

Case Type: Criminal

Eastern District of Wisconsin No. 15-CR-217 — **Pamela Pepper**, *Chief Judge*.

Before DIANE S. SYKES, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Jawanza Williams, a federal inmate housed in a New Jersey prison,¹ sought his release to home confinement under 18 U.S.C. § 3624(c)(2) in light of the COVID-19 pandemic. The district court denied the order, explaining that only the Federal Bureau of Prisons could authorize this request. And to the extent that he sought compassionate release under 18 U.S.C. § 3582(c)(1)(A), added the court, he did not exhaust his administrative remedies. We affirm.

Carl Self v. Zachary Bergh No. 20-1894

Submitted November 10, 2020 — Decided November 12, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 18-C-1823 — **Lynn Adelman**, *Judge*.

Before DIANE S. SYKES, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Carl Self, a former pretrial detainee, asserts that officers at the Brown County Jail in Green Bay, Wisconsin, violated his constitutional rights when they ignored his requests for a shower, medical attention, and a new uniform after a guard discharged oleoresin capsicum spray ("OC" or "pepper" spray) at him. Because Self did not raise any factual dispute about whether the jail officers acted reasonably, we affirm the district court's entry of summary judgment for the defendants.

State of Wisconsin v. U.S. Department of Education and Theresa Taylor Nos. 20-1016 & 20-1115

Argued September 21, 2020 — Decided November 12, 2020

Case Type: Civil

Western District of Wisconsin. No. 3:18-cv-00220-jdp — **James D. Peterson**, *Chief Judge*.

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

BRENNAN, *Circuit Judge*. The Randolph-Sheppard Act provides economic opportunities by granting blind persons priority to operate vending facilities at certain government properties. When a blind vendor, Jocelyn Belsha, was awarded certain vending operations in Racine County, Wisconsin, a different blind vendor, Theresa Taylor, became unhappy and challenged the award. The Act is a federal law administered by state licensing agencies, so Taylor's challenge traveled first through Wisconsin's regulatory process, and then through federal administrative proceedings. Eventually an arbitration panel, convened to resolve Taylor's federal grievance, awarded her money damages and a permanent vending machine services contract for a site in Racine. Federal courts review such an award as a final action of a federal agency under the Administrative Procedure Act. The district court vacated the arbitration panel's decision, ruling that there were no material deficiencies in the choice of Belsha for the Racine site, the arbitration panel's key factual findings were not supported by substantial evidence, and the arbitration panel's ultimate conclusion was arbitrary and capricious. We agree with the district court and affirm its decision for the state licensing agency and against Taylor.

Jose Cossio, Jr. v. Patrick Blanchard, John Tourtelot Nos. 19-2219 and 19-3000

Submitted November 10, 2020 — Decided November 12, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 19 C 265 — **Thomas M. Durkin**, *Judge*.

Northern District of Illinois, Eastern Division. No. 15 C 7746 — **Edmond E. Chang**, *Judge*.

Before DIANE S. SYKES, *Chief Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Jose Cossio, a former employee of Cook County, Illinois, has filed several suits about his discharge. He believes that the County, its inspector general, and a state judge wrongly had him fired. After a state court rejected Cossio's claims against the inspector general and the County, the district court dismissed a similar federal suit against them as blocked by claim preclusion. It later entered summary judgment for the judge, concluding that he committed no torts. Those rationales are correct, so we affirm.

Jeffrey Ferguson v. Cook County Correctional Facility/Cermak No. 20-1185

Submitted November 10, 2020 — Decided November 13, 2020

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 19 C 4607 — **Matthew F. Kennelly**, *Judge*.

Before DIANE S. SYKES, *Chief Judge*; JOEL M. FLAUM, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Jeffrey Ferguson, a pretrial detainee at Cook County Jail in Chicago, filed suit under 42 U.S.C. § 1983 alleging that the law enforcement officers and medical providers who interacted with him after his arrest failed to properly address his mental-health needs. He primarily alleges that his deteriorating mental health and new arrests after posting bond resulted from the defendants' failure to follow through on an order to involuntarily commit him. After affording Ferguson two chances to amend his complaint, the district court dismissed the case at screening. Because Ferguson's complaint does not plausibly allege that any of the county- or city-employed defendants acted at least recklessly towards him, and the privately employed defendants are not subject to suit under § 1983, we affirm.