

Opinions for the week of October 19 – October 23, 2020

Gerald Dix v. Edelman Financial Services, LLC, et al. No. 18-2970

Argued September 17, 2020 — Decided October 19, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17-cv-6561 — **Charles R. Norgle**, *Judge*.
Before KANNE and HAMILTON, *Circuit Judges*.

PER CURIAM. Gerald Dix alleges that he was unlawfully evicted. But unlike most unlawful-eviction plaintiffs, Dix filed a sprawling *pro se* complaint in federal court asserting nineteen claims against almost as many defendants. The claims included a hodgepodge of state and federal causes of action. The defendants included Dix's alleged romantic-interest-turned-landlady Theresa Miller, Miller's real estate broker and financial advisor, a handful of police officers, two municipalities, the local car-towing company, and a few John and Jane Does for good measure. The experienced district judge dismissed Dix's complaint for failure to state a claim. On appeal, we have focused on just one cause of action—Dix's Fourth Amendment claim against a subset of the defendants—because the others are wholly frivolous. We conclude that Dix's allegations as to that claim, like the rest, do not state a claim for relief, so we affirm the district court.

USA v. Larry Cochran Nos. 20-1882 & 20-1907

Submitted October 15, 2020 — Decided October 21, 2020

Case Type: Criminal

Northern District of Indiana, Hammond Division. No. 2:06 CR 114 — **James T. Moody**, *Judge*.
Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Larry Cochran, a wheelchair-bound federal prisoner whose health has deteriorated over the years, seeks further relief from his criminal sentence. Eleven months ago, we remanded his case so that the district court could consider his pending motion for compassionate release under § 603 of the First Step Act, Pub. L. 115-391, 132 Stat. 5194 (2018). *United States v. Cochran*, 784 Fed. App'x 960 (7th Cir. 2019). On remand, the court denied that motion and Cochran's later request for relief under Amendment 782 to the Sentencing Guidelines. The court acted within its discretion when it denied his motion for compassionate release, and he was not entitled to a reduction under Amendment 782 because he had already received one, so we affirm.

Crystal Holtz v. Oneida Airport Hotel Corp. No. 20-1797

Submitted October 15, 2020 — Decided October 21, 2020

Case Type: Civil

Eastern District of Wisconsin. 19-C-1682 — **William C. Griesbach**, *Judge*.
Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

After she was fired from her job at an Oneida Nation-owned hotel, Crystal Holtz, an Oneida Nation member, sued her former employer in state court for various federal, state, and tribal law claims. Defendants removed the case to federal court. The district court then dismissed the suit based on the doctrine of tribal sovereign immunity and, alternatively, Holtz's failure to state a claim upon which relief could be granted. We affirm, though on the alternative basis that Holtz failed to state a claim.

Larry Harris, Jr. v. Jeremy Westra No. 20-1620

Submitted October 15, 2020 — Decided October 21, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 18-C-0234 — **Lynn Adelman**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Larry Harris, a Wisconsin prisoner who was disciplined after assaulting a corrections officer, challenges the constitutionality of his placement in administrative confinement. He asserts that his due-process rights were violated at his administrative- confinement hearings because Jeremy Westra, one member of the prison's placement committee, harbored bias against him. See 42 U.S.C. § 1983. Harris also says that the prison's warden implemented policies at the prison that resulted in constitutionally deficient review of administrative-confinement placements. The district court found no evidence of bias against Harris during his placement proceedings and entered summary judgment for the officer and warden. We affirm.

Shannon Prince v. Appleton Auto LLC No. 20-1106

Argued September 22, 2020 — Decided October 21, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 18-cv-1465 — **Nancy Joseph**, *Magistrate Judge*.

Before SYKES, *Chief Judge*, FLAUM, and ROVNER, *Circuit Judges*.

FLAUM, *Circuit Judge*. Defendant-appellee Applecars, LLC is a member of a network of affiliated but corporately distinct used-car dealerships located in Wisconsin. Plaintiff-appellant Shannon Prince worked at Applecars for several months in 2018 before he was fired. Prince claims his firing was retaliatory, and sued Applecars and its affiliates for racial discrimination under Title VII of the Civil Rights Act of 1964. The district court granted summary judgment to the defendants, noting that Applecars had fewer than fifteen employees and therefore was not subject to Title VII. Because there is insufficient evidence to support Prince's theory that we should pierce the corporate veil of the dealership network, and thereby aggregate the number of employees such that Title VII would apply, we affirm.

Charmell Brown v. Alex Jones No. 19-3172

Argued September 24, 2020 — Decided October 21, 2020

Case Type: Prisoner

Central District of Illinois. No. 17-2212 — **Sue E. Myerscough**, *Judge*.

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

KANNE, *Circuit Judge*. When selecting jurors for Charmell Brown's murder trial in Illinois state court, the prosecution struck venireperson Devon Ware who had been to the crime scene. As it happens, Ware is also African American. In his petition for habeas relief now before us, Brown argues that the prosecution struck Ware on the basis of his race and that the Illinois Appellate Court unreasonably applied *Batson v. Kentucky*, 476 U.S. 79 (1986), when holding otherwise in Brown's direct appeal. The court made no such error. It correctly noted the prosecution's apparent reason for striking Ware—that he had been to the crime scene—and found no circumstances giving rise to an inference that the prosecution engaged in racial discrimination. We therefore affirm the district court's decision denying Brown's petition for a writ of habeas corpus.

Eric Phillipson v. Chad F. Wolf No. 19-3131

Submitted October 6, 2020 — Decided October 21, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division No. 14-cv-08138 — **Andrea R. Wood**, *Judge*.

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

SCUDDER, *Circuit Judge*.

ORDER

Eric Phillipson, now 53 years old, believes that he was fired from his job as a planner for the Federal Emergency Management Agency (FEMA) based on his age and in retaliation for his complaints about discrimination, in violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621–634. The district court entered summary judgment in favor of FEMA, ruling that no evidence supported an inference of age-based discrimination or retaliation. On appeal, Phillipson contends the district court improperly credited FEMA's version of events over his own. But none of the evidence on which he relies creates a material factual dispute, so we affirm.

Patrick Gage v. Reed Richardson No. 19-2002

Argued September 18, 2020 — Decided October 21, 2020

Case Type: Prisoner

Western District of Wisconsin. No. 16-cv-849 — **James D. Peterson**, *Chief Judge*.

Before SYKES, *Chief Judge*, and HAMILTON and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. A Wisconsin jury found Patrick Gage guilty of repeatedly sexually assaulting his daughter, H.R.G., when she was a child. In state postconviction proceedings, Gage asserted that his trial counsel was ineffective for failing to interview and present testimony from his son and mother, Josh and Nancy Gage. The state appellate court concluded that Gage was not prejudiced by his trial counsel's failure to call these witnesses because their testimony in postconviction proceedings was consistent with H.R.G.'s trial testimony. The state court's decision was not an unreasonable application of clearly established federal law, so we affirm the district court's denial of habeas relief.

Common Cause Indiana v. Connie Lawson No. 20-2877

Submitted October 21, 2020 — Decided October 23, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:20-cv-01825-RLY-TAB — **Richard L. Young**, *Judge*.

Before SYKES, *Chief Judge*, and EASTERBROOK and BRENNAN, *Circuit Judges*.

PER CURIAM. Last year Indiana amended its election code's standards for extending the hour polls close. Last month the district court enjoined these amendments, first concluding they unconstitutionally burden Indiana residents' fundamental right to vote, and then determining they violate the Supremacy Clause of the U.S. Constitution. After the district court denied a request to stay the injunction, various Indiana state officials charged with administering elections appealed and now move this court to stay the injunction pending appeal... For the reasons relayed above, the state defendants are likely to succeed on the merits, and the injunction will cause irreparable harm. The district court abused its discretion by entering the preliminary injunction, so we GRANT the state defendants' motion to stay the injunction pursuant to FED. R. APP. P. 8(a)(2), and we confirm that Indiana may enforce the challenged statutes as written. Because there is not room for ongoing debate about the issues in this case, the preliminary injunction issued in this case is summarily reversed.

John Nikoloff v. Neal Ziliak No. 20-1626

Submitted October 23, 2020 — Decided October 23, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:18-cv-02273-JRS-DML — **James R. Sweeney II**, Judge.

Before MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

John Nikoloff sued his criminal defense lawyer under 42 U.S.C. § 1983, alleging that he pleaded guilty based on his lawyer's bad advice. The district court dismissed his suit on several grounds, among them that his lawyer was not a state actor under § 1983. We agree and affirm.

Biner Ma v. CVS Pharmacy, Inc. No. 20-1500

Submitted October 23, 2020 — Decided October 23, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 19-cv-3367 — **Robert M. Dow, Jr.**, Judge.

Before MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER., *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

After a dispute over a refund at a CVS Pharmacy, Biner Ma filed a race-discrimination charge against the pharmacy with the Illinois Department of Human Rights (IDHR). Ma asserts that, during those proceedings, two agents of CVS misled the IDHR about the identity of the corporate entity responsible for the alleged discrimination. Believing that CVS convinced the IDHR to swap in a "non-existing entity," she then sued CVS for fraud and conspiracy. The district court dismissed the complaint for failure to state a claim and, when Ma failed to amend it within the time allotted, entered final judgment against her. We affirm.

USA v. Christopher E. Branch No. 20-1308

Submitted October 23, 2020 — Decided October 23, 2020

Case Type: Criminal

Southern District of Illinois. No. 3:19-CR-30043-SMY-1 — **Staci M. Yandle**, Judge.

Before MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Christopher Branch pleaded guilty to possessing a firearm as a felon. 18 U.S.C. § 922(g)(1). The district court sentenced him to 60 months' imprisonment, which was 14 months over the applicable guidelines range, followed by three years of supervised release. Branch appealed, but his appointed counsel asserts that the appeal is frivolous and seeks to withdraw. *See Anders v. California*, 386 U.S. 738, 746 (1967). Counsel's brief explains the nature of the case and addresses potential issues that an appeal of this kind would be expected to involve. Because his analysis appears thorough, and Branch has not responded to his motion, *see* CIR. R. 51(b), we limit our review to the subjects that counsel discusses... Given the court's thorough account of its reasons for its sentence, and its accord with the sentencing statute, any challenge to the substantive reasonableness of Branch's sentence would be frivolous. Therefore, we GRANT counsel's motion to withdraw and DISMISS the appeal.

Gary Miller, Jr. v. Mark Sevier No. 20-1121

Submitted October 23, 2020 — Decided October 23, 2020

Case Type: Prisoner

Southern District of Indiana, Indianapolis Division. No. 1:19-cv-1194-SEB-MJD — **Sarah Evans Barker**, *Judge*.
Before MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

After Gary Miller, Jr., left his bunk while a count of inmates was in progress, a disciplinary hearing officer found him guilty of violating a prison rule that bars interfering with the count. He was sanctioned with a loss of good-time credit. Miller has petitioned for a writ of habeas corpus under 28 U.S.C. § 2254, alleging that his due-process rights were violated because the officer's decision was not supported by sufficient evidence. Based on the evidence that Miller left his bunk during the count, the district court correctly determined that "some evidence" supports the discipline, so we affirm.

Mohammad Mansoori v. Scott Moats No. 19-2921

Submitted October 23, 2020 — Decided October 23, 2020

Case Type: Prisoner

Central District of Illinois. No. 1:17-cv-01312-MMM — **Michael M. Mihm**, *Judge*.

Before MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

After arriving at the Federal Correctional Institution in Pekin, Illinois, Mohammad Mansoori repeatedly requested authorization for a pair of soft-soled shoes to relieve foot pain from diabetes and a gunshot wound. The prison's Clinical Director, Dr. Scott Moats, denied his requests, and Mansoori filed this *Bivens* action against him for violating the Eighth Amendment. *See Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The district court granted Dr. Moats's motion for summary judgment, determining that no reasonable juror could find that he was deliberately indifferent to Mansoori's serious medical needs. We affirm.

Gregory Jones v. Andrew Tilden No. 19-1829

Submitted October 23, 2020 — Decided October 23, 2020

Case Type: Prisoner

Central District of Illinois. No. 17-cv-1248 — **Joe Billy McDade**, *Judge*.

Before MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Based on his own deposition testimony, Gregory Jones, an Illinois prisoner at the Pontiac Correctional Center, lost at summary judgment on his claim that a physician's assistant was deliberately indifferent to his medical needs. In his complaint, Jones had accused the assistant of failing to issue him a bottom-bunk permit after he had fallen from his upper bunk. But the district court observed that his accusation could not be true because Jones had testified that he first fell from his upper bunk after he saw the assistant. Jones now argues that his prison grievance contradicts his deposition testimony and warrants a trial on his claim. Because the grievance is unsworn and in it Jones does not state that he told the assistant about his falls, we affirm.