



Civil Rights Update

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Jailhouse Lawyers, Retaliation, and Access to the Courts

Jailhouse lawyers are a routine part of civil rights litigation. They commonly prepare complaints, review discovery, and assist other inmates in the prosecution of their claims. The Seventh Circuit, in *Jones v. Van Lanen*, No. 20-1383, 2022 WL 663417 (7th Cir. Mar. 7, 2022), recently reviewed whether an inmate's retaliation claim, for filing grievances, could survive summary judgment. It did. Also, the court evaluated whether the seizure of an inmate's records from a jailhouse lawyer's prison cell created a triable access to courts claim. It did not.

William Jones, an inmate in Wisconsin, sued two prison officials claiming they violated his constitutional rights by retaliating against him for filing grievances and threatening a lawsuit and by denying him access to the courts. The district court granted summary judgment for all claims. An appeal followed, affirming in part, and reversing in part the decision. *Id.* at *1.

A large number of documents were found by Captain Jay Van Lanen in a jailhouse lawyer's cell. *Id.* The documents contained personal health information of other inmates, which is generally prohibited, and therefore Captain Van Lanen had the records confiscated. *Id.* Some of the seized records belonged to the plaintiff, William Jones. The jailhouse lawyer was assisting Jones with a lawsuit he intended to file against Captain Van Lanen and others regarding inhumane prison conditions, assignment to a restricted housing unit, and denial of access to religious services. *Id.*

Jones sought the return of the confiscated documents, arguing that the materials were privileged and confidential legal materials; his request was denied. *Id.* When Jones asked Captain Van Lanen about the return of his paperwork, Jones claims that Captain Van Lanen replied, "Everything is against the law and legal work to you guys, and I went through your stuff and it is contraband now and you won't get to use it to sue me with!" *Id.* Jones also alleged, in a verified complaint, that Captain Van Lanen stated that he was going to speak to the officer who was to preside over the jailhouse lawyer's disciplinary hearing to "make sure he knows it's contraband." *Id.*

After a disciplinary hearing regarding the confiscated records, where the jailhouse lawyer declined to support plaintiff's version of events, Captain Andrew Wickman concluded that the materials were contraband and ordered them destroyed. *Id.* A lawsuit against both Captain Van Lanen and Captain Wickman followed, alleging a violation of plaintiff's First Amendment rights by confiscating and later destroying the records from the jailhouse lawyer's cell. He further alleged he was retaliated against for having filed grievances against Captain Van Lanen.

Plaintiff's First Amendment Retaliation Claim

A First Amendment retaliation claim requires "evidence sufficient to allow a reasonable jury to conclude [plaintiff] 'engaged in protected First Amendment activity, suffered a deprivation that would likely deter future First Amendment activity, and the First Amendment activity was a motivating factor in the defendant's decision to take the retaliatory action.'" *Id.* at *2 (quoting *Walker v. Groot*, 867 F.3d 799, 803 (7th Cir. 2017)). The parties did not dispute these elements, nor did they dispute that the First Amendment protects actions such as preparing a complaint. Instead, what was at issue

was whether the actions of the defendants were motivated by the threatened litigation. *Jones*, No. 20-1383, 2022 WL 663417, at *2.

In support of plaintiff's First Amendment claim against Captain Van Lanen, Jones offered two declarations from other inmates who claimed to have overheard Captain Van Lanen tell Jones "you can't sue me now." The Seventh Circuit concluded this was sufficient to survive summary judgment, and for a trial to proceed on plaintiff's retaliation claim against Captain Van Lanen. *Id.* at *3. However, summary judgment for Captain Wickman was affirmed. In his verified complaint, plaintiff alleged that Captain Wickman said, "Captain Van Lanen is a good man and I'm not going to let ya'll cost him his livelihood with frivolous lawsuits." *Id.* The Seventh Circuit concluded this was not enough to link Captain Wickman's decision-making in the disciplinary hearing, where he concluded that the documents were contraband, with evidence showing some influence by Captain Van Lanen. Notably, at plaintiff's deposition, he could not remember exactly what Captain Wickman had said to him and did not offer any other testimony against him. *Id.* at *4. Accordingly, the Seventh Circuit concluded that plaintiff's allegations against Captain Wickman were too speculative to survive summary judgment. *Id.*

Plaintiff's Access to Courts Claim

In addition to his First Amendment claims, plaintiff argued that the destruction of his legal materials denied him access to the courts. *Id.* at *5. The Seventh Circuit disagreed. To prove a right to access a courts claim, a plaintiff "must submit evidence identifying '(1) a non-frivolous, underlying claim; (2) the official acts frustrating the litigation; and (3) a remedy that may be awarded as recompense but that is not otherwise available in a suit or settlement.'" *Id.* (quoting *Harer v. Casey*, 962 F.3d 299, 308 (7th Cir. 2020) (citing *Christopher v. Harbury*, 536 U.S. 403, 415 (2002))). At issue here was the second element. Plaintiff needed to show that the seizure and destruction of his legal materials, adversely affected "his effort to vindicate his rights through litigation." *Id.*

Plaintiff argued that the destruction of evidence weakened the settlement potential of his claim, interfered with his ability to get assistance from a jailhouse lawyer, and thus frustrated his efforts to vindicate his rights. *Jones*, No. 20-1383, 2022 WL 663417, at *5. This argument failed because there was nothing in the record suggesting that a jury could conclude confiscation and destruction of his records impeded his ability to bring his claims. *Id.* at *6. Plaintiff had personal knowledge that he could use to support his case, did not need the records, and their destruction did not frustrate his efforts. *Id.*

There is no question about what happened to plaintiff's records—they were confiscated and later destroyed. However, to succeed on an access to courts claim, plaintiff was required to show "more than just some minimal degree of impediment in filing the claims." *Id.* As plaintiff did not make such a showing; summary judgment was granted. *Id.*

Conclusion

This case is a good reminder that a successful First Amendment retaliation claim does not hinge on whether the retaliation worked as intended. Here, defendant allegedly wanted to stop plaintiff from suing him. If that was his intent, he was unsuccessful as he was sued. While the Seventh Circuit concluded that defendant's actions did not deny plaintiff access to the courts, liability could still be imposed if a jury concludes defendant's actions were motivated by the grievances and threatened litigation.



About the Author

Brian M. Smith concentrates his practice in the areas of civil rights, professional liability, employment law and trucking/motor carrier litigation. Much of his practice entails defending government officials and medical professionals in cases alleging violations of constitutional rights. Brian also has experience defending employers before the Illinois Human Rights Commission and in federal court. He represents defendants in other tort litigation, including cases arising from automobile and trucking accidents. Mr. Smith has extensive motion practice experience in both state and federal courts and has authored numerous successful motions to dismiss and motions for summary judgment. In addition, he has defended the firm's clients in depositions of plaintiffs, and fact and expert witnesses.

Mr. Smith began his career with *Heyl, Royster, Voelker & Allen, P.C.* by clerking in the firm's Urbana office. Following graduation from law school in 2007, he joined the firm in the Urbana office as an associate. During law school, he was a teaching assistant at the University of Illinois College of Law and a member of the *University of Illinois Law Review*.

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