**NONPRECEDENTIAL DISPOSITION**
To be cited only in accordance with FED. R. APP. P. 32.1

# United States Court of Appeals

**For the Seventh Circuit**
**Chicago, Illinois 60604**

Submitted July 24, 2023*
Decided July 25, 2023

**Before**

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2969

CHET SMITH,
*Plaintiff-Appellant*,

*v*.

COOK COUNTY, ILLINOIS
*Defendant-Appellees*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 22-cv-1678

Martha M. Pacold,
*Judge*.

**O R D E R**

In 2018, a grand jury in the Circuit Court of Cook County, Illinois, indicted Chet Smith for attempted first-degree homicide, and he was remanded to the Cook County Jail for pretrial detention. Smith later sued, alleging that the prosecution violated his

*The appellees were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the appellant's brief and the record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

due-process rights under the Fourteenth Amendment. The district court screened the complaint under 28 U.S.C. § 1915A and, after allowing Smith to amend his complaint, dismissed the case. Because the amended complaint failed to state a claim, we affirm.

We accept the facts Smith alleges as true, drawing reasonable inferences in his favor. *Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020). In 2018, after a shooting, Smith was arrested and indicted for attempted first-degree murder. Only the grand jury foreman, not the other grand jurors, signed the indictment.

In March 2022, Smith—apparently still in jail awaiting trial—sued the County. He alleged that there was no probable cause to arrest him in 2018; that the State's Attorney had conspired with a Chicago police detective to maliciously prosecute him and was withholding exculpatory evidence in violation of *Brady v. Maryland,* 373 U.S. 83 (1963); and that his indictment was invalid because the entire grand jury had not signed it. The district court screened the complaint, 28 U.S.C. § 1915A, and dismissed it after concluding that the only possible theory of relief against the County was a claim under *Monell v. Department of Social Services.*, 436 U.S. 658 (1978), for failure to train prosecutors to obtain valid indictments. But, the court concluded, the absence of all grand jurors' signatures does not violate the federal Constitution. The court allowed Smith to amend, but because the amended complaint "differed little" from the first, the court dismissed it with prejudice.

On appeal, Smith focuses on the supposed invalidity of his indictment and does not develop arguments about the dismissal of his other claims. He relies on *Gaither v. United States*, 413 F.2d 1061 (D.C. Cir. 1969), to argue that Cook County deprived him of due process because each member of the grand jury did not sign his indictment. He further asserts that Cook County has an unlawful practice of submitting indictments only to the foreman, and not to the whole grand jury. We review de novo a decision to dismiss a case at screening for failure to state a claim. *Schillinger*, 954 F.3d at 994.

Smith's amended complaint failed to state a claim based on the form of his indictment. First, Illinois law requires only the foreman to sign grand-jury indictments, so to prevail, Smith would have to establish that the Illinois rule violates the federal constitution. 725 ILCS 5/112-4(d). But federal law does not require every grand juror's signature even on federal indictments. FED. R. CRIM. P. 6(c) ("The foreperson . . . will sign all indictments."). Second, even the absence of required signatures would not make the indictment constitutionally deficient. In *United States v. Irorere*, we addressed a challenge to the sufficiency of a federal indictment that lacked the signatures of the

grand jury foreperson and the prosecutor, both required by the Federal Rules. 228 F.3d 816, 830 (7th Cir. 2000); FED. R. CRIM. P. 6(c), 7(c)(1). We concluded that the missing signatures were "mere technical deficiencies," not fatal defects. *See id.* at 831; *see also People v. Benitez*, 661 N.E.2d 344, 348 (Ill. 1996).

More fundamentally, the Fifth Amendment's grand jury requirement does not even apply to the states—they can use whatever charging mechanism they choose, so long as it provides due process. *Peters v. Kiff*, 407 U.S. 493, 496 (1972). And all the Fourteenth Amendment requires is that a defendant received adequate notice of the specific charge against him and a fair opportunity to defend himself. *See Ashburn v. Korte*, 761 F.3d 741, 758 (7th Cir. 2014) (citing *Bae v. Peters*, 950 F.2d 469, 478 (7th Cir. 1991)). Because Smith does not allege that he lacked adequate notice of the charges, he cannot establish a constitutional violation based on the form of the indictment.

*Gaither*, which is not binding on us, does not suggest otherwise. There, only the grand jury foreman had seen the indictment, while the other grand jurors had reviewed a "presentment" devoid of the facts underlying the charge. 413 F.2d at 1065. The D.C. Circuit concluded that this procedure was "erroneous." *Id.* at 1070. But this does not help Smith: the court went on to conclude that there was no constitutional violation because Gaither had identified no prejudice. *Id.* at 1075.

Finally, Smith's contention that Cook County prosecutors unlawfully submit indictments only to the grand jury foreman is unavailing. As noted above, neither Illinois law nor the federal Constitution requires every grand juror to sign. And Smith pleads no facts—apart from the absence of those unnecessary signatures—to support his allegation that full grand juries do not vote on indictments in Cook County. Because only the foreman's signature is required, it would not be reasonable to infer from the lack of other signatures that other jurors did not vote on the indictment, and so Smith does not state a claim. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Finally, for clarity of the record, we note that district court stated that the dismissal of Smith's case for failure to state a claim would be a strike under 28 U.S.C. § 1915(g), and he incurs another one for this appeal, *see id.*

AFFIRMED