NONPRECEDENTIAL DISPOSITION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 November 28, 2023*
Decided February 14, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-3050

MATTHEW R. POULIN,
Plaintiff-Appellant,

v.

ALISHA WAITE,
Defendant-Appellee.

Appeal from the United States District Court for the Central District of Illinois.

No. 22-2092

James E. Shadid,
Judge.

O R D E R

Matthew Poulin brought a *Bivens* action against his probation officer, alleging that she violated several of his constitutional rights while administering the conditions of his supervised release. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The district court screened his complaint under 28 U.S.C. § 1915A

* We have agreed to decide the case without oral argument because the briefs and 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).

and dismissed his case for failure to state a claim. Because a *Bivens* action is not available for any of his alleged constitutional violations, we affirm the judgment.

Poulin has a fraught criminal history involving frequent returns to prison. He pleaded guilty to receipt of child pornography in 2012. After two appeals, the district court sentenced him to 7 years' imprisonment and 10 years of supervised release. He began his first term of supervised release in 2018 but was charged in 2019 with failing to register as a sex offender. He pleaded guilty to the new charges, and the court revoked his supervised release and sentenced him to a total of two more years in prison and two ten-year terms of supervised release, served concurrently. He finished that prison term in November 2020. Since then, the court has revoked Poulin's supervised release twice more, once in 2021 for possessing a controlled substance (for which he received one year in prison and eight years of supervised release) and once in 2022 (for which he received just one more year in prison with no further supervised release.) He completed his sentences last year.

Poulin's complaint centers on his second term of supervised release between November 2020 and July 2021. (He previously included allegations relating to his first term of supervised release but agrees on appeal that the statute of limitations has lapsed.) Poulin vehemently denies that he is challenging the terms of his release or his revocation for the violation of those terms.

Instead, Poulin alleges that his probation officer, Alisha Waite, improperly expanded several of the terms of his release and thereby usurped the judicial power to decide his punishment. He asserts that Waite unjustifiably restricted his internet access by blocking him from social media, dating, and adult pornography sites, in violation of the First Amendment, when the conditions required only monitoring of access to child pornography. He also alleges that she monitored his cellphone activity, location, and communications and mirrored his phone without probable cause in violation of the Fourth Amendment. Waite further violated the Fifth Amendment, Poulin says, when she contacted women Poulin associated with to determine whether they had minor children and to let them know of his sex offender status, but his conditions only required adults to know of this status before they could supervise his interaction with minors. Finally, he asserts that these and other aspects of his supervision violated the Eighth Amendment because of the psychological harm they caused him.

Poulin was in prison at the time he filed his complaint, so the district court screened it under 28 U.S.C. § 1915A and dismissed the case. The court first noted that to whatever extent Poulin was challenging the terms of his release, his remedy was a

motion to modify those conditions under 18 U.S.C. § 3583(e) in his criminal case. And any claims for damages that resulted from the revocation of his supervised release were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Any remaining claim, the court ruled, failed because Waite, as a probation officer, was entitled to absolute immunity from a suit challenging conduct "intimately associated with the judicial phase of the criminal process." *Tobey v. Chibucos*, 890 F.3d 634, 649 (7th Cir. 2018).

On appeal, Poulin argues that the judge misconstrued his complaint. He asserts that he is not challenging the terms of his supervised release, but rather the way Waite exceeded them. He also maintains *Heck* does not bar his claims because he is not seeking damages based on his revocation, only Waite's actions while supervising. He finally disputes Waite's immunity from suit regarding these claims, suggesting her actions were closer to the investigatory, rather than judicial, phase of the proceedings.

The district court properly dismissed Poulin's complaint, although we see a more fundamental problem than those identified by the district court. *See Rowe v. Shake*, 196 F.3d 778, 782 (7th Cir. 1999) (affirming dismissal at screening on alternative grounds). Regardless of the merit of any of his criticisms of the district court's rationale, Poulin failed to state a claim because he lacks a cause of action under *Bivens*. A two-step framework applies when determining the availability of a *Bivens* action. *See Snowden v. Henning*, 72 F.4th 237, 239 (7th Cir. 2023). First, courts ask whether the case arises in a new context or one that mirrors the Supreme Court's three cases recognizing *Bivens* actions. *Sargeant v. Barfield*, 87 F.4th 358, 363 (7th Cir. 2023). Any substantial variance in context, even if the constitutional rights involved are the same, means the plaintiff is asking for a novel application of *Bivens* and the court must proceed cautiously. *See Ziglar v. Abbasi*, 582 U.S. 120, 138–39 (2017). If the context is new, the second inquiry is whether there are special factors or alternative remedies for the plaintiff that discourage an extension of *Bivens*. *Id*. at 136–37. Extending *Bivens* into new areas is highly disfavored. *Sargeant*, 87 F.4th at 366.

All of Poulin's claims arise in new contexts. The Supreme Court has never recognized a *Bivens* action under the First Amendment, so those claims always arise in new contexts. *Egbert*, 596 U.S. at 498–99. And although Poulin correctly notes that the Court has recognized *Bivens* actions for certain violations of rights under the Fourth, Fifth, and Eighth Amendments, *see Snowden*, 72 F.4th at 241 (collecting cases), a mere overlap in the relevant constitutional rights does not mean a claim arises in the same context. *Ziglar*, 582 U.S. at 139. For one thing, Poulin was on supervised release, unlike any plaintiff in a recognized *Bivens* action. This status matters because people on

supervised release routinely have their constitutional rights lawfully limited. *See, e.g.*, *United States v. Sines*, 303 F.3d 793, 801 (7th Cir. 2002). Moreover, the Court has been clear that a new "category of defendants" is enough to move a *Bivens* suit into a new context, *Ziglar*, 582 U.S. at 135, especially when that new category might implicate separation-of-powers concerns, *Snowden*, 72 F.4th at 244–45. A probation officer is a clear example of a new defendant that implicates distinct separation-of-powers issues. Congress created the role of probation officers as an arm of the court, 18 U.S.C. § 3602, and thus they possess absolute immunity for their quasi-judicial functions. *Tobey*, 890 F.3d at 649–50. Even if we were to assume Poulin's claims do not relate to these functions, this unique relationship still brings the case into a new context. *Ziglar*, 582 U.S. at 139–40.

Because Poulin's claims arise in a new context, we can find an implied cause of action only if there are no special factors or alternative remedies counseling hesitation. Here, Poulin has a clear alternative remedy—if he believed Waite was misinterpreting the conditions of his supervised release, Congress permitted him to ask the sentencing judge to modify his conditions and clarify their scope. 18 U.S.C. § 3583(e)(2); *United States v. Neal*, 810 F.3d 512, 516–18 (7th Cir. 2016). District courts may modify conditions of supervised release at any time, even if there is no change in circumstances, to promote effective supervision and allow the person on release to know his duties before he is accused of violating them. *Neal*, 810 F.3d at 516–18. Poulin, therefore, could have requested more specificity in his conditions to avoid Waite's alleged overstepping of authority—or the court might have confirmed for him that her interpretation was correct. The existence of this Congressionally designed alternate remedy is enough reason by itself to bar us from recognizing a *Bivens* cause of action in this new context. *See Sargeant*, 87 F.4th at 367–68. The district court therefore correctly dismissed the case at screening for failure to state a claim. 28 U.S.C. § 1915A.

AFFIRMED