

NONPRECEDENTIAL DISPOSITION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 20, 2022*

Decided July 20, 2022

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 21-3189

ROBERT L. SWAFFORD,
Plaintiff-Appellant,

v.

THOMAS JORDAN,
Defendant-Appellee.

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

No. 20-CV-705-NJR

Nancy J. Rosenstengel,
Chief Judge.

ORDER

Robert Swafford sued the then-mayor of West Frankfort, Illinois and the attorney who represented him in connection with a traffic offense, alleging that they conspired to obtain his conviction. *See* 42 U.S.C. § 1983. The district court dismissed his complaint.

* 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).

Because Swafford does not tell us why the ruling was erroneous, and his complaint's broad allegations do not state a plausible claim, we affirm.

Swafford drove through an intersection in West Frankfort at the same time two motorcycles were passing through it. His vehicle collided with one of them, and the motorcyclist later died. Swafford asserted that the motorcyclist was going too fast. While investigating, law enforcement obtained two surveillance videos from nearby businesses. One showed that Swafford had stopped before entering the intersection—which Swafford believes is exonerating—and the other did not depict the accident at all. A witness gave a statement that the two motorcyclists were speeding, though, at trial, the witness estimated a lower speed than he initially reported.

At a bench trial in February 2020, Swafford was convicted of failing to yield. 625 ILCS 5/11-904(b). The state court reasoned that even though Swafford had stopped at the stop sign, he did not adequately rebut the prima facie evidence that he failed to avoid the collision. *See id.* 5/11-904(d). The surveillance video, the court continued, did not support Swafford's contention that the motorcycles were travelling too fast to be seen. Even though the state court's docket displays an entry for a scheduled sentencing two months later, we have no record that any sentencing has taken place (or is required for this kind of offense, which appears to be categorized as a petty offense or violation).

After his conviction, Swafford sued his defense counsel and the then-mayor of West Frankfort under § 1983. He alleged that his lawyer had "violated [his] constitutional rights to justice in the court system" by encouraging witnesses to lie and by accepting a bribe from the mayor to convict him. Swafford further alleged that his counsel had told another lawyer that the surveillance video showed that Swafford was not at fault, but the mayor, counsel said, barred access to the video. Swafford sought damages and a declaratory judgment ordering the mayor to provide the video.

The defendants separately moved to dismiss the complaint for failure to state a claim. *See* FED. R. CIV. P. 12(b)(6). The district court granted those motions in separate decisions and entered final judgment after the second, without giving Swafford a chance to replead. His failure to respond to either motion, the court concluded, was an admission of the merits of the motions under its local rules. *See* S.D. ILL. L.R. 7.1(c). Even if Swafford had responded, the court reasoned, the complaint did little more than allege his innocence of the traffic offense, which meant that the court had to dismiss the complaint as unripe under *Heck v. Humphrey*, 512 U.S. 477 (1994), or abstain under *Younger v. Harris*, 401 U.S. 37 (1971).

After the court also denied Swafford's motion to reconsider, *see* FED. R. CIV. P. 59(e), Swafford appealed the judgment. We have resolved any questions of appellate jurisdiction and the scope of the appeal to our satisfaction.¹

Swafford, proceeding pro se, raises no cogent argument on appeal. He reasserts the allegations in his complaint but fails to address the reasons why the court dismissed his claim. Although we construe pro se briefs generously, an appellate brief must contain a discernible argument and support for it. *See* FED. R. APP. P. 28(a)(8)(A); *Anderson v. Hardman*, 241 F.3d 544, 545–46 (7th Cir. 2001). If the appellant does not articulate why a decision was incorrect, any argument for vacating it is waived. *See Shipley v. Chicago Bd. of Election Comm'rs*, 947 F.3d 1056, 1062–63 (7th Cir. 2020).

We pause to note that it is unclear whether the district court's reasoning can provide the basis to affirm. We recently clarified that district courts cannot rely solely on the plaintiff's lack of response as the reason to grant a motion to dismiss. *See Marcure v. Lynn*, 992 F.3d 625, 633 (7th Cir. 2021). Further, we do not see enough evidence to confidently approve of the other reasons—a *Heck* bar or the need to abstain. *Heck* generally blocks allegations, like Swafford's, that would imply the invalidity of a conviction unless the conviction has been overturned. *See Morgan v. Schott*, 914 F.3d 1115, 1122 (7th Cir. 2019). But there is ambiguity in our limited record about whether the conviction is final because we are not certain whether Swafford has been or will be sentenced. *See Justice v. Town of Cicero*, 577 F.3d 768, 773 (7th Cir. 2009). For the same reason, it is unclear for purposes of *Younger* whether there is an ongoing criminal case.

Still, under our de novo review, the broad allegations in Swafford's complaint do not plausibly state a constitutional claim. *See Webb v. Frawley*, 906 F.3d 569, 576 (7th Cir.

¹ The district court granted the motions to dismiss by the lawyer and the mayor on February 5, 2021, and June 11, 2021, respectively, and entered judgment on June 11. Swafford timely moved for relief under Federal Rule of Civil Procedure 59(e), and his time to appeal therefore was extended until 30 days from the district judge's ruling on that motion on November 3, 2021. *See* FED. R. APP. P. 4(a)(1), (a)(4)(A)(iv). The notice of appeal, docketed on November 23, 2021, is timely as to the orders on both motions to dismiss. Swafford could not appeal the ruling on the first motion until it merged into a final judgment (a partial final judgment was not entered under Federal Rule of Civil Procedure 54(b)). And a notice of appeal no longer must designate specific orders that merge into the judgment. *See* FED. R. APP. P. 3(c)(4). That the state lawyer was not made party to the appeal on our docket does not matter in light of the result we reach today.

2018). He presents only speculation or assumptions based on the unfavorable outcome of his case, including that his attorney conspired with and accepted a bribe from the mayor. That cannot support a claim of conspiracy. *See Redd v. Nolan*, 663 F.3d 287, 292 (7th Cir. 2011). Further, Swafford submitted documents—including the state court’s reasoning for his conviction—showing that the surveillance footage was not withheld and was, in fact, presented at trial. This vanquishes his primary support for the alleged conspiracy. *See Lekas v. Briley*, 405 F.3d 602, 613 (7th Cir. 2005) (pleading out of court).

Finally, Swafford has not asked for a chance to amend his complaint, and we see no indication that amendment would be fruitful, and so we AFFIRM the judgment.