

NONPRECEDENTIAL DISPOSITION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 April 4, 2025*

Decided April 4, 2025

Before

DIANE S. SYKES, *Chief Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-3149

STEPHEN DURR,
Plaintiff-Appellant,

v.

STATE OF ILLINOIS, et al.,
Defendants-Appellees.

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

No. 1:24-cv-07808

Lindsay C. Jenkins,
Judge.

ORDER

Stephen Durr, a former Illinois prisoner, challenges the dismissal of his suit against the State of Illinois and two of its agencies for holding him in prison past his release date. The district judge concluded that the defendants were not suable persons under 42 U.S.C. § 1983 and dismissed the suit for failure to state a claim. We affirm.

* The appellees were not served with process and are not participating in this appeal. After examining the appellant's brief and the record, we have concluded that the case is appropriate for summary disposition. FED. R. APP. P. 34(a)(2)(C).

We accept the facts alleged in Durr’s amended complaint as true and draw all reasonable inferences in his favor. *See Thomas v. Neenah Joint Sch. Dist.*, 74 F.4th 521, 522 (7th Cir. 2023). Durr was sentenced to one year in the Illinois Department of Corrections and scheduled for release on January 11, 2022. He was not released, however, until 108 days later, on April 29.

After his release, Durr sued the State of Illinois, the Illinois Department of Corrections, and the Office of the Illinois Attorney General, alleging that they unlawfully extended his term of imprisonment. The district judge reviewed Durr’s amended complaint but pointed out that he could not proceed under § 1983, which applies only to persons acting under color of state law. She warned Durr that he needed to name an individual defendant to stave off dismissal of his case. Durr responded that he wanted to proceed not under § 1983 but the Due Process Clause of the Fourteenth Amendment and the right of eminent domain under the Illinois constitution, ILL. CONST. art. I, § 15. After the judge reiterated that § 1983 was the exclusive federal remedy for his claim, Durr added as a defendant David Gomez, the warden of Stateville Correctional Center.

Durr then filed a notice to voluntarily dismiss his claim against Gomez. He stressed that he wanted to continue only with his Fourteenth Amendment and state eminent domain claims, not his § 1983 claim. But because Durr dismissed the only properly named defendant, the judge dismissed the case without prejudice.

On appeal, Durr asserts that the judge ignored his arguments under the Fourteenth Amendment and the Illinois constitution. But the judge properly declined to reach those arguments. Constitutional rights such as those under the Fourteenth Amendment typically lack a “built-in cause of action” and must be invoked under a procedural vehicle such as § 1983. *DeVillier v. Texas*, 601 U.S. 285, 291 (2024). The judge correctly ruled that the State of Illinois—and by extension its agencies—is not a suable “person” within the meaning of § 1983. *See Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 64 (1989); *de Lima Silva v. Dep’t of Corr.*, 917 F.3d 546, 565 n.15 (7th Cir. 2019); *Thomas v. Illinois*, 697 F.3d 612, 613 (7th Cir. 2012). As for Durr’s challenge under the Illinois constitution, we presume that the judge relinquished jurisdiction over that state-law claim after dismissing his federal claims. *See RWJ Mgmt. Co. v. BP Prods. N. Am., Inc.*, 672 F.3d 476, 479–80 (7th Cir. 2012).

AFFIRMED