

NONPRECEDENTIAL DISPOSITION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 4, 2025*

Decided November 5, 2025

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 24-2797

JAY F. VERMILLION,
Plaintiff-Appellant,

v.

TOM FRANCUM, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Southern District of
Indiana, Indianapolis Division.

No. 1:20-cv-01674-JPH-KMB

James Patrick Hanlon,
Judge.

ORDER

Jay Vermillion, a prisoner at Pendleton Correctional Facility in Indiana, appeals from the summary judgment rejecting his claims that prison officials dismissed him from his job in the prison's law library in retaliation for prior lawsuits. The district court concluded that Vermillion failed to present evidence from which a reasonable jury

* 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).

could find that any defendant was personally involved in his discharge or had a motive to retaliate. We affirm.

This suit arises from Vermillion's discharge from his position in Pendleton's law library in July 2018. The prison states that it fired him because he was a person of interest in an investigation—conducted by prison investigator Brock Turney under the supervision of lead investigator Charles Houchins—into whether drugs were smuggled into the prison through library mail. According to the investigators' report, drug-sniffing dogs located paperwork traced with drugs in the work areas of multiple prisoners, including Vermillion. He maintains that this investigation was a pretext to retaliate against him for lawsuits he brought against prison officials. *See Vermillion v. Levenhagen*, No. 1:15-cv-00605-RLY-TAB (S.D. Ind. 2011); *Vermillion v. Corizon Health, Inc.*, No. 1:16-cv-1723-JMS-DLP (S.D. Ind. 2016); *Vermillion v. Corizon Health, Inc.*, No. 1:17-cv-00961-RLY-MPB (S.D. Ind. 2017). Vermillion also contends that the investigation was ordered by Houchins's predecessor, Tom Francum, because Vermillion previously sued Francum's wife. After he was fired, Vermillion complained to multiple prison officials, including superintendent Dushan Zatecky and assistant superintendent Duane Alsip, but neither responded.

Vermillion sued Francum, Houchins, and Turney for instigating a pretextual investigation in retaliation for his prior lawsuits. *See* 42 U.S.C. § 1983. He also sued Zatecky and Alsip for turning a blind eye to the investigators' misconduct.

The district court entered summary judgment for the defendants. The court first determined that Vermillion provided no evidence that Francum was involved in the discharge or that Houchins or Turney knew about—let alone were motivated by—the prior suits. As to Zatecky and Alsip, the court concluded that Vermillion failed to provide evidence of any wrongdoing to which these defendants could turn a blind eye.

On appeal, Vermillion raises a threefold challenge to the district court's ruling in favor of Francum. Vermillion argues, first, that circumstantial evidence could permit a jury to conclude that Francum had both the motive and authority to retaliate. This includes evidence that Francum worked in the Indiana Department of Correction's central office at the time of the investigation; that Vermillion had sued Francum's wife; and that Francum had been sued by another prisoner for fabricating evidence to fire that prisoner from Pendleton's law library in retaliation for protected speech, *Holleman v. Zatecky*, No. 1:14-cv-00671-TWP-DML (S.D. Ind. 2014). But Vermillion presented no evidence that Francum was personally involved in his discharge. *Whitfield v. Spiller*, 76 F.4th 698, 706 (7th Cir. 2023).

Vermillion also argues that the district court should have struck—as impermissibly speculative—affidavits from investigators, including Houchins and Turney, stating that Francum was not involved in the investigation. But as the district court recognized, the affiants were directly involved in the investigation, so they knew and could testify to whether Francum had any part in it. *See* FED R. CIV. P. 56(C)(1)(A) (procedures for supporting factual positions).

And Vermillion proposes that Francum—by failing to deny an allegation in the defendants’ answer to his complaint—effectively admitted his personal involvement in the investigation. *See* FED. R. CIV. P. 8(b)(6). But the defendants’ answer generally denied all allegations not specifically admitted. *See* FED. R. CIV. P. 8(b)(3).

As for his retaliation claims against investigators Houchins and Turney, Vermillion argues that he presented evidence of pretext in their decision to fire him—namely, inconsistencies, contradictions, or lack of evidence in their investigation report. However, to demonstrate that Houchins and Turney violated his First Amendment rights, Vermillion needed to—but did not—submit evidence that the investigators were aware of his prior suits. *Consolino v. Towne*, 872 F.3d 825, 829–30 (7th Cir. 2017).

Finally, Vermillion maintains that his evidence shows that Zatecky and Alsip are liable under § 1983 because they ignored his complaints of the investigators’ retaliation against him. True, an official can be held liable for a constitutional violation that he did not directly participate in, so long as he knew “about the conduct, facilitated it, approved it, condoned it, or turned a blind eye” to it. *Rasho v. Elyea*, 856 F.3d 469, 478 (7th Cir. 2017) (cleaned up). But this assumes that some underlying constitutional violation occurred, *see Cielak v. Nicolet Union High Sch. Dist.*, 112 F.4th 472, 481 (7th Cir. 2024), and Vermillion presented no evidence of an underlying violation that Zatecky or Alsip could have ignored.

AFFIRMED