

NONPRECEDENTIAL DISPOSITION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 February 2, 2026*

Decided February 5, 2026

Before

MICHAEL B. BRENNAN, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 25-1344

MICHAEL D. HICKINGBOTTOM,
Plaintiff-Appellant,

v.

CHRISTOPHER HOLCOMB, et al.,
Defendants-Appellees.

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

No. 2:22-cv-00038-JRS-MKK

James R. Sweeney, II,
Chief Judge.

ORDER

Michael Hickingbottom, an Indiana prisoner, sued prison officials for failing to address heating, plumbing, and black mold issues in violation of his rights under the Eighth Amendment. *See* 42 U.S.C. § 1983. The district court entered partial summary judgment for the defendants on the claims involving black mold and plumbing. But the

* 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).

court concluded that Hickingbottom had presented evidence from which a reasonable jury could conclude that one of the defendants, Lieutenant Christopher Holcomb, acted with deliberate indifference to the lack of heat in Hickingbottom's cell. A jury found in Holcomb's favor. Hickingbottom appeals only the district court's entry of summary judgment on his claim that prison officials failed to address ongoing black mold issues in his cells and one aspect of his jury trial. We affirm.

I.

We begin with Hickingbottom's claim that prison officials were deliberately indifferent to persistent black mold growth in his cells. On this claim, we construe the facts and draw all reasonable inferences in favor of Hickingbottom, the nonmovant. *Balle v. Kennedy*, 73 F.4th 545, 553 (7th Cir. 2023).

In July 2018, after Hickingbottom was assigned to the special control unit at Wabash Valley Correctional Facility in Carlisle, Indiana, he began experiencing headaches, nosebleeds, breathing problems, and profusive sweating. He suspected that black mold was causing his symptoms after he overheard inmates and maintenance staff talk about black mold in the ventilation and plumbing systems.

In November 2021, Hickingbottom submitted a healthcare services request, complaining that he was having breathing problems caused by black mold and asked officials to clean his cell. One month later, he filed a grievance about the black mold. Thomas Wellington—a grievance specialist—replied, telling Hickingbottom to request cleaning supplies from Holcomb. Hickingbottom was provided with disinfectant.

In January 2022, Hickingbottom submitted a second grievance about the black mold and received a response from Wellington informing him that no black mold had been found during inspections and that Hickingbottom should request cleaning supplies. That same month, Hickingbottom sent letters to Jay Hendrix, the safety hazard manager, and Warden Frank Vanihel, requesting that staff power wash his cell because the black mold was making him sick. Hendrix responded that Hickingbottom needed to clean his cell with the provided cleaning supplies. Vanihel responded that no black mold had been found and that he should request more cleaning supplies.

Later that same month, Wellington and Tawni Templeton, another grievance specialist responded to Hickingbottom and other prisoners' continued complaints of black mold by asking guards and maintenance staff to inspect the cells and provide

prisoners with cleaning supplies. Holcomb was one of the guards who inspected Hickingbottom's cell, but he found no black mold. Sergeant Richard Yarber also inspected Hickingbottom's cell and unit, and relayed the prisoners' complaints to Hendrix. After Hickingbottom told Sergeant Everado Angeles-Mora about the black mold, Angeles-Mora also contacted Hendrix. In response, Hendrix inspected Hickingbottom's cell and several others and took pictures of the alleged black mold. He concluded, however, that no black mold was present in the prisoners' cells.

In March 2022, Holcomb transferred Hickingbottom to a new cell because of Hickingbottom's concerns about black mold. But Hickingbottom filed a grievance complaining that there was black mold in his new cell, and the cleaning supplies did not prevent the black mold from growing back.

Hickingbottom's issues with black mold persisted, and in April 2022, the prison contracted with an environmental consulting firm to conduct a mold assessment. The firm's representatives conducted visual inspections of two cell blocks and several cells—but not Hickingbottom's. Based on these inspections, the firm found only minor mold growth and concluded that it did not present a risk to the prisoners' health.

Following the assessment, Vanihel temporarily relocated prisoners, including Hickingbottom, so sanitation workers could power wash and scrub the cells where prisoners had complained of black mold. Holcomb acknowledged in an email to another prison official in April that the black mold in Hickingbottom's cell was an ongoing issue and directed staff to provide prisoners with cleaning supplies.

Hickingbottom filed another grievance in April 2022. But a non-party grievance specialist dismissed the grievance, saying: "Building was assessed by professional. Frivolous. Nothing further."

In September 2022, Hickingbottom took scrapings of the suspected black mold in his cell and sent them to an environmental consulting firm for testing. The samples tested positive for high levels of three types of toxic mold. Hickingbottom then sent copies of the lab report to Vanihel, Hendrix, and Holcomb. Shortly after, the prison again transferred Hickingbottom and other prisoners to allow sanitation workers to clean his cell.

Hickingbottom sued Holcomb, Hendrix, Templeton, Wellington, Yarber, Angeles-Mora, and Vanihel, for violating his rights under the Eighth Amendment by

acting with deliberate indifference to the black mold in his cells. *See* § 1983. The defendants then moved for summary judgment.

The court entered summary judgment for the defendants. The court first ruled that a reasonable jury could find that the presence of black mold was an objectively serious condition. But the court determined that because prison officials had reasonably responded to Hickingbottom's complaints of black mold, no reasonable jury could conclude that the officials were deliberately indifferent.

On appeal, Hickingbottom challenges the entry of summary judgment, arguing that prison officials acted with deliberate indifference by persisting with ineffective efforts to remediate the black mold. The Eighth Amendment's prohibition against cruel and unusual punishment requires prison officials to provide humane conditions of confinement, including adequate food, clothing, shelter, and medical care. *Balle*, 73 F.4th at 552. To survive summary judgment, Hickingbottom needed to present some evidence from which a reasonable jury could conclude that the defendants were aware of an excessive risk to his health or safety but intentionally disregarded it. *Id.* A prison official acts with intentional disregard where he "fail[s] to take reasonable measures to abate" a known risk to a prisoner's health or safety. *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). But establishing intentional disregard is a "'high hurdle and an exacting standard'" and requires "'something approaching a total unconcern for the prisoner's welfare.'" *Balle*, 73 F.4th at 553 (quoting *Stockton v. Milwaukee County*, 44 F.4th 605, 615 (7th Cir. 2022)).

Here, no reasonable jury could find that the prison officials were deliberately indifferent to the black mold because they took reasonable steps to address the issue, *see Thomas v. Blackard*, 2 F.4th 716, 721 (7th Cir. 2021), even if those steps ultimately fell short, *see Rasho v. Jeffreys*, 22 F.4th 703, 711 (7th Cir. 2022). When Hickingbottom first complained about black mold in his cell in November 2021, he was provided with cleaning supplies and continued to have regular access to those supplies. Within two months—following continued complaints from Hickingbottom—Holcomb, Yarber, and Hendrix inspected Hickingbottom's cell but did not find any black mold. And Angeles-Mora relayed Hickingbottom's complaints of mold to Hendrix. Even still, prison officials transferred Hickingbottom to a new cell two months later to address his concerns about ongoing black mold.

After Hickingbottom expressed concerns about his new cell, prison officials hired a consulting firm to inspect for black mold. The firm concluded there was only minor mold growth that did not pose a risk to prisoners' health, but Vanihel still transferred

Hickingbottom to enable sanitation workers to wash and scrub his cell. Officials took all of these steps within six months of Hickingbottom's first complaint about black mold. We recognize that Hickingbottom attested that black mold persisted after these cleaning efforts, but the mold's persistence is not by itself proof of deliberate indifference. *Cf. Sain v. Wood*, 512 F.3d 886, 895 (7th Cir. 2008) (persistence of bug infestation over six years despite regular exterminations did not show deliberate indifference). Prison officials made repeated efforts to address Hickingbottom's concerns and remediate any possible black mold.

Hickingbottom argues that the findings from his September 2022 lab report showing high levels of toxic mold in his cell support a conclusion that prison officials acted with deliberate indifference. But before the report, prison officials had no reason to question the April 2022 assessment from the environmental consulting firm that the presence of minor mold growth did not pose a health risk. And when Hickingbottom sent Vanihel, Holcomb, and Hendrix copies of his lab report, they responded by transferring him to a new cell to allow sanitation workers to clean his cell. The officials' response to Hickingbottom's lab report thus does not demonstrate "the callous disregard required to make out an Eighth Amendment claim." *Rasho*, 22 F.4th at 710.

II.

We next address Hickingbottom's claim that Holcomb acted with deliberate indifference to his rights under the Eighth Amendment by failing to address the lack of heat in Hickingbottom's cell. This claim proceeded to trial, where Hickingbottom was represented by appointed counsel. The jury returned a verdict in favor of Holcomb.

On appeal, Hickingbottom does not contest the jury's verdict in favor of Holcomb. Rather, he argues that his right to effective counsel under the Sixth Amendment was violated when his lawyer did not challenge the all-white jury venire. Hickingbottom contends that the jury was not a fair cross-section of the community.

But litigants in civil cases have no constitutional right to counsel, so ineffective assistance of counsel is not a ground for reversal. *Diggs v. Ghosh*, 850 F.3d 905, 911 (7th Cir. 2017). Moreover, challenges to the racial composition of a venire must be brought "before the voir dire examination begins, or within seven days after the party discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier." 28 U.S.C. § 1867(c). Hickingbottom does not assert that he timely objected to the composition of the jury pool, so his argument is waived. *See* 28 U.S.C.

§ 1867(e). Regardless, Hickingbottom had to show that the under-representation of African Americans in the venire was due to their systematic exclusion from the jury selection process. See *United States v. Hatchett*, 31 F.3d 1411, 1426 (7th Cir. 1994) (discussing *Duren v. Missouri*, 439 U.S. 357, 364 (1979)). But he points to nothing in the record to establish that African Americans were systematically excluded from the jury selection process.

AFFIRMED.