

No. _____

In The
Supreme Court of the United States

October Term, 2017

CHARLES SMITH,

Petitioner,

vs.

PAUL ANDERSON,

Respondent.

*On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Seventh Circuit*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the opinion of the Seventh Circuit Court of Appeals holding that Respondent's arbitrary and knowingly false reasons for issuing a Parole Violation Report to prevent Smith's release, thereby violating Smith's Fourth Amendment rights, were protected by qualified immunity because "[n]o court has held that the Fourth Amendment compels release of sex offenders who lack lawful and approved living arrangements" is contrary to, and an unreasonable application of, the correct standard established by this Court in *Ziglar v. Abbasi*.

PARTIES TO THE PROCEEDING

All parties to the proceeding are named in the caption.

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Petitioner, Charles Smith, respectfully requests that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at *Smith v. Anderson*, 874 F.3d 966 (7th Cir. 2017) (App. A). The opinion of the district court in *Smith v. Anderson*, 15 C 2330 (N.D. Ill. May 23, 2016) is not published, but can be found at 2016 U.S. Dist. LEXIS 67135 (App. B). Judgment was entered on May 23, 2016. (App. C.)

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit (“Court of Appeals”) was entered on October 31, 2017. No petitions for rehearing were filed.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT OF THE CASE

The fundamental question in this case is whether a prison worker is entitled to qualified immunity, as a matter of law, despite making inaccurate and false allegations in a parole violation report resulting in continued imprisonment beyond the date specified for release on parole. More specifically, the question is whether the existence of qualified immunity should be

based on the “facts and circumstances” standard of *Ziglar v. Abbasi*, 137 S.Ct. 1843 (2017), instead of requiring a specific case on point contrary to the worker’s actions.

A. Proceedings Below.

Charles Smith is a former inmate who served six months of his Mandatory Supervised Release (“MSR”) term in custody of the Illinois Department of Corrections (“IDOC”), after Paul Anderson, a parole officer employed by IDOC to supervise Smith, issued an arrest warrant alleging Smith violated the MSR conditions imposed by the Parole Review Board (“PRB”), before Smith was released on parole. On March 17, 2015, Smith filed a complaint in the United States District Court for the Northern District of Illinois alleging, *inter alia*, his arrest warrant was premised on false and misleading statements resulting in a false arrest, thus violating his civil rights under the Constitution and laws of the United States.

Anderson filed a motion to dismiss on June 25, 2015. Anderson argued that Smith was automatically subjected to additional conditions of MSR, such as electronic monitoring, pursuant to 730 ILCS 5/3-3-7(a)(7.7). The motion to dismiss was withdrawn after Smith filed a response establishing that because his conviction was in 2001, the electronic monitoring requirement of the statute was not applicable. That statute required a conviction on or after January 1, 2007 in order to be applicable.

Anderson subsequently filed a motion for summary judgment. The motion for summary judgment was primarily based on the allegation that a sex offender cannot be released on MSR unless he has an approved host site. The motion for summary judgment ignored the fact that Smith’s claims were based on false and

misleading statements contained in the PVR and that such false statements could not, as a matter of law, give rise to reasonable suspicion.

The district court granted Anderson's motion for summary judgment and entered judgment in favor of Anderson on May 23, 2016. Smith timely filed his notice of appeal on May 31, 2016. The Seventh Circuit Court of Appeals affirmed the summary judgment on October 31, 2017.

B. Factual Background.

In 2001, Smith was convicted of criminal sexual assault and sentenced to eight years imprisonment and three years of MSR. This conviction required Smith to register as a sex offender. After serving the complete sentence on his 2001 conviction, Smith was convicted in 2013 of driving with a revoked license and sentenced to one year of imprisonment and one year of MSR.

On March 24, 2014, Smith was transferred from the Cook County Jail to IDOC at the Stateville Correctional Facility. At this point, Smith had completed the one-year prison sentence on his 2013 felony conviction and was prepared to begin his one-year term of MSR.

When Smith arrived at Stateville, he was asked for the first time to provide "host sites" for where he would reside during his MSR period. Smith was never asked to submit host sites during the nearly seven months he was incarcerated in Cook County Jail before arriving at IDOC. Smith provided Field Services with two host sites, the second of which was his mother's home.

Next, a Parole Violation Report ("PVR") was prepared and issued by Anderson on the ground Smith "did not have an approved host site at which to serve

his MSR at the time the violation report was issued.” Anderson prepared the PVR at the request of his supervisor Carmen Ruffin (“Ruffin”). The arrest warrant was issued for March 24, 2014. Anderson signed the PVR the same day. Ruffin signed PVR the following day.

After providing host sites, Smith was called from the bullpen and informed he “would not be going home.” IDOC did not inform Smith why he was not being released. Smith was then walked to a cell where he remained until the next day.

The following day, March 25, 2014, Smith met with Bruce Falker of Field Services who told Smith that his host sites were submitted to the parole office and that Field Services was informed by Ruffin that “there wasn’t an agent to go check the host sites out.”

On March 27, 2014, Smith finally received the PVR written by Anderson. The PVR stated Smith was not being released because:

Offender is in violation of the Rule # 16 in that he is mandated by the Prisoner Review Board to be supervised on electronic monitoring. This agency attempted to place the offender at (all) places with family and/or friends in the community and no suitable host site was found to supervise the offender on electronic monitoring. This agency attempted to place the offender at (all) places that the Illinois Department of Corrections would pay for and the paid placements for any number of reasons could not accept the offender. The offender is unable to fulfill the mandate of electronic monitoring placed on him by the Prisoner Review Board.

Contrary to these allegations, IDOC had not investigated either of Smith’s proposed host-sites at the time the PVR was issued. Furthermore, the PVR Order (“Order”), which established the conditions of Smith’s MSR, was not written until

March 25, 2014, and not signed by the PRB until March 26, 2014, both of which occurred after Anderson prepared and signed the PVR on March 24, 2014.

The Order imposed only three conditions on Smith's MSR, including: (1) substance abuse counseling, (2) close supervision with weekly check times, and (3) registration as a sex offender. The boxes for "Electronic Monitoring" and "GPS" remained unchecked. The box for "No Computer or Internet Access" also remained unchecked. The only condition listed in the "Other" section, which allows the PRB to freely write in any other parole condition, was registration as a sex offender. No other conditions concerning the host site were referenced or imposed. At this time, Smith still had not received any information regarding his MSR conditions. Smith did not receive his MSR conditions until sometime in April, after he submitted a formal request.

On April 7, 2014, Smith received a preliminary hearing, where the PRB hearing officer determined there was probable cause for Smith's arrest. There is no other documentation or transcript of the preliminary hearing in the certified record.

On April 9, 2014, more than two weeks after Smith submitted his proposed host sites and also after the preliminary hearing, Smith's first proposed host site was denied, because the host refused to accept him.

On May 28, 2014, more than two months after the PVR was issued, GPS monitoring was added as a condition of Smith's parole. It was added by the PRB at Anderson's request. Anderson's request was entered into the computer a little more

than two and a half hours after Smith's mother contacted IDOC, for the second time in one week, requesting an officer to visit her home to approve it as a host site.

On June 9, 2014, two months after the first host site was rejected and after GPS monitoring was added to his MSR conditions, Smith's second host site, his mother's home, was investigated and rejected by Anderson on the basis of "unsuitable conditions." The reasons provided by Anderson were "3 minor grandkids live in home" and the site "also has computers with internet access."

On April 16, 2014, Smith filed a second grievance seeking reprimand of responsible parties and the status of his submitted host sites. The grievance was filed while he was incarcerated at Hill Correctional Center. The Administrative Review Board at Pickneyville Correctional Center received this grievance on April 21, 2014. The Return of Grievance Correspondence form was completed, then signed on August 15, 2014, with the only comment being "contact field services."

Smith was finally released from IDOC custody on September 24, 2014, six months after he should have been released.

REASONS FOR GRANTING THE WRIT

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW, DESPITE ACKNOWLEDGING THE INCORRECT AND INACCURATE STATEMENTS IN THE PAROLE VIOLATION REPORT, REQUIRED SMITH TO OVERCOME THE CLAIM OF QUALIFIED IMMUNITY BY IDENTIFYING A CASE THAT SPECIFICALLY HOLDS THAT THE FOURTH AMENDMENT COMPELS THE RELEASE OF SEX OFFENDERS "WHO LACK LAWFUL AND APPROVED LIVING ARRANGEMENTS," INSTEAD OF APPLYING THE STANDARD OF ZIGLAR.

The Court of Appeals, despite ruling that the reasons stated in the Parole Violation Report were "incorrect" and "inaccurate," granted the prison worker qualified immunity because

“no court has held that the Fourth Amendment compels the release of sex offenders who lack lawful and approved living arrangements.” Instead, the Court should have applied the standard most recently stated by this Court in *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017). That standard is:

The court has held that qualified immunity protects ‘all but the plainly incompetent or those who knowingly violate the law.’ *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986). To determine whether a given officer falls into either of those categories, a court must ask whether it would have been clear to a reasonable officer that the alleged conduct ‘was unlawful in the situation he confronted.’ *Saucier, supra*, at 202, 121 S.Ct. 2151, 150 L.Ed.2d 272. If so, then the defendant officer must have been either incompetent or else a knowing violator of the law, and thus not entitled to qualified immunity. If not, however – i.e., if a reasonable officer might not have known for certain that the conduct was unlawful – then the officer is immune from liability.

137 S.Ct. at 1867.

Smith raised several legal theories in his complaint. Regardless of the stated legal theory, Smith’s complaint boils down to the fact that the statements made in the PVR were untrue at the time they were made and, therefore, could not give rise to reasonable suspicion to detain Smith from his scheduled release on MSR.

THE DISTRICT COURT’S GRANT OF SUMMARY JUDGMENT ON THE FALSE ARREST CLAIM SHOULD BE REVERSED BECAUSE A REASONABLE JURY COULD HAVE FOUND THERE WAS NO REASONABLE SUSPICION TO ARREST AND DETAIN SMITH.

To prevail on a constitutional claim for false arrest for a parole violation, a plaintiff must show there was no reasonable suspicion for his arrest. *United States v. Knights*, 534 U.S. 112, 121 (2001). The Fourth Amendment requires “at least a minimal level of objective justification” to establish reasonable suspicion. *United States v. Sokolow*, 490 U.S. 1, 7 (1989). An officer “cannot be said to have acted in an objectively reasonable manner” and his conduct is the “active cause of the illegal arrest” if the officer submits an affidavit “contain[ing] statements he knew to

be false or would have known were false had he not recklessly disregarded the truth and no accurate information sufficient to constitute probable cause attended the false statements.” *Olson v. Tyler*, 771 F.2d 277, 281 (7th Cir. 1985) (deciding *Franks v. Delaware*, 438 U.S. 154 (1977) analysis applicable to arrest warrants). Reckless disregard for truth means the officer “in fact entertained serious doubts as to the truth of his allegations” and can be inferred from “circumstances evincing ‘obvious reasons to doubt the veracity’ of the allegations.” *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968).

“[I]f there is room for a difference of opinion concerning the facts or the reasonable inferences to be drawn from them,” then “[t]he jury must determine the existence of probable cause.” *Gonzalez v. City of Elgin*, 578 F.3d 526, 537 (7th Cir. 2009) (citing *Sornberger v. City of Knoxville, Ill.*, 434 F.3d 1006, 1013–14 (7th Cir. 2006)). For the reasons that follow, Anderson could not have had a reasonable belief that Smith was violating, or about to violate, his MSR conditions. At the very least, a genuine issue of material fact exists as to whether Anderson could have had a reasonable suspicion.

1. Based on the facts and circumstances known to Anderson at the time the PVR was issued, the statements contained in the PVR were false, or issued with reckless disregard for the truth, and thus preclude establishing reasonable suspicion.

The basis for Smith’s arrest in the PVR prepared and issued by Anderson was that “no suitable host site was found to supervise the offender on electronic monitoring.” Viewing the facts in the light most favorable to Smith, Anderson knew the statements in the PVR were false, or acted with reckless disregard for the truth when he prepared the PVR, because: (1) Anderson could not have reviewed the PRB Order before preparing the PVR, (2) electronic monitoring was not a condition of Smith’s MSR, and (3) IDOC did not attempt to place Smith in a suitable host site at the time the PVR was issued. At minimum, there is a genuine issue of material fact

regarding whether Anderson knew the statements were false, or acted with reckless disregard for the truth. In any event, the district court's grant of summary judgment to Anderson should be reversed.

First, Anderson could not have reviewed the MSR conditions imposed under the PRB Order before he prepared and signed the PVR on March 24, 2014 because the PRB Order was not created until March 25, 2014 and not approved by the PRB until March 26, 2014. Thus, the statements were issued with reckless disregard for the truth because they had no basis in fact at the time, yet were subjecting Smith to arrest.

Second, even if Anderson had reviewed the PRB Order before preparing the PVR, Anderson still would not have had reasonable suspicion to arrest Smith. The PVR provided that:

Offender is in violation of the rule #16 in that he is mandated by the Prisoner Review Board to be supervised on electronic monitoring. . . . The offender is unable to fulfill the mandate of electronic monitoring placed on him by the Prisoner Review Board.

A review of the PRB Order, however, shows neither "Electronic Monitoring" nor "GPS" were conditions of Smith's parole. Furthermore, the PRB did not reference "Electronic Monitoring" or "GPS" in any of the write-in sections of the Order, including the "Other" section. The only conditions imposed by the Order were substance abuse counseling, close supervision with weekly check times, and registration as a sex offender. Therefore, even if Anderson read the Order before issuing the PVR, he still could not have concluded Smith would be violating his MSR and issuing such statements were done so falsely or with reckless disregard for the truth.

Third, the PVR issued by Anderson incorrectly asserted that IDOC:

[A]ttempted to place the offender at (all) places with family and/or friends in the community and no suitable host site was found to supervise the offender on electronic monitoring. This agency

attempted to place the offender at (all) places that the Illinois Department of Corrections would pay for and the paid placements for any number of reasons could not accept the offender.

No evidence in the record demonstrates IDOC actually “attempted to place” Smith in a suitable host site at the time the PVR was issued. In fact, the record shows the host sites were denied well after the March 24, 2014 PVR. The first host site was rejected on April 9, 2014, more than two weeks after the invalid warrant was issued, because the “host refused to accept” Smith. The second host-site, Smith’s mother’s home, was denied more than eight weeks later, on June 9, 2014.

These facts unequivocally demonstrate the PVR contained false statements. The Seventh Circuit acknowledged this fact. But in the seminal Seventh Circuit case regarding validity of falsified warrants, *Olson v. Tyler*, the Court held that “[w]here the judicial finding of probable cause is based solely on information the officer knew to be false or would have known was false had he not recklessly disregarded the truth, not only does the arrest violate the Fourth Amendment, but the officer will not be entitled to good faith immunity.” 771 F.2d at 282.

Similarly, the PVR issued by Anderson contained false statements. Contrary to the basis provided for in the warrant, the PRB did not impose electronic monitoring as a condition of Smith’s parole, and neither Anderson nor any other IDOC agent attempted to place Smith in a suitable host site at the time the warrant was issued. Furthermore, Anderson could not have reviewed Smith’s MSR conditions before preparing and signing the PVR because the PRB was issued *after* the PVR.

Accordingly, a reasonable jury could have found the facts and circumstances within Anderson’s knowledge at the time the PVR was issued were insufficient to establish reasonable suspicion. Therefore, the district court’s grant of summary judgment to Anderson should be

reversed and the jury must determine the existence of reasonable suspicion. *See City of Elgin*, 578 F.3d at 537.

Significantly, the two-month delay between the first and second host sites being investigated, coincided with a GPS monitoring condition being requested by Anderson the same day Smith's mother contacted IDOC for the second time in the same week asking for an agent to approve her home as a host site. Smith's mother contacted IDOC on Monday May 19, 2014 asking for an agent to set up a meeting to visit her home to approve it as a host site. Smith's mother called IDOC later that week on Friday May 23, 2014, again requesting that IDOC come to approve her home as a host site. That computer entry stated a message was left for "Agent H27" to call Smith's mother back. The next computer entry occurred a little more than two and a half hours later, and was entered by Agent H27, Paul Anderson. In this entry, Anderson requested "the addition of GPS" to the PRB Order. Within forty minutes of Anderson's entry, Ruffin made a computer entry requesting a PRB Order change noting "offender is a CSO and has been released without EM restrictions. . . . The sex offense along with substance abuse are indicators of high risk and should be closely supervised." Just five days later, Ruffin made an entry indicating, "offender's [sic] orders have been approved to include GPS duration, sex offender counseling, and substance abuse treatment." Only after the GPS monitoring was added as an MSR condition did Anderson investigate the second proposed host site.

2. Anderson had sufficient personal involvement and is not protected by qualified immunity, because the warrant prepared by Anderson was predicated on false statements and violates a clearly established constitutional rights.

To recover damages under 42 U.S.C. § 1983, a plaintiff must establish that a defendant was personally responsible for the deprivation of a constitutional right. *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995). "An official satisfies the personal responsibility requirement of

section 1983 . . . if the conduct causing the constitutional deprivation occurs at [his]/her direction or with [his]/her knowledge and consent.” *Smith v. Rowe*, 761 F.2d 360, 369 (7th Cir. 1985) (quoting *Crowder v. Lash*, 687 F.2d 996, 1005 (7th Cir. 1982)). “In short, some causal connection or affirmative link between the action complained about and the official sued is necessary for § 1983 recovery.” *Gentry*, 65 F.3d at 561.

It is uncontested that Anderson prepared Smith’s PVR on March 24, 2014. The PVR alleged Smith violated his parole for failure to comply with electronic monitoring and because the IDOC attempted, but failed, to place Smith in an appropriate host site as of March 24, 2014. As discussed previously, these statements were false because the PRB did not impose electronic monitoring or GPS as a condition of Smith’s parole, electronic monitoring was not imposed independently by statute, and because the host sites were not investigated until April 9 and June 9, in 2014. Smith’s subsequent detention and continued incarceration after his preliminary hearing on April 7, 2014 were also predicated on these false statements contained in the PVR prepared by Anderson. Therefore, an affirmative link exists between Anderson’s personal involvement preparing the PVR and Smith’s false arrest and continued incarceration between March 24, 2014 and September 24, 2014.

Smith’s arrest without reasonable suspicion violated his Fourth Amendment rights. The Fourth Amendment protects the “right of the people to be secure in their persons . . . against unreasonable searches and seizures . . . and no Warrants shall issue, but upon probable cause. U.S. CONST. AMEND. IV. Fourth Amendment reasonableness “is predominantly an objective inquiry,” *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011) (quoting *City of Indianapolis v. Edmond*, 531 U.S. 32, 47 (2000)). An officer “cannot be said to have acted in an objectively reasonable manner” and his conduct is the “active cause of the illegal arrest” if the officer submits an

affidavit “contain[ing] statements he knew to be false or would have known were false had he not recklessly disregarded the truth and no accurate information sufficient to constitute probable cause attended the false statements.” *Olson*, 771 F.2d at 281. In such a circumstance, “the arrest violate[s] the [F]ourth [A]mendment” and “the officer will not be entitled to good faith immunity.” *Id.* at 282.

Here, as discussed above, Anderson could not have reviewed Smith’s MSR conditions before preparing and signing the PVR because the PRB was issued *after* the PVR. Even if Anderson could have reviewed the PRB Order, the PVR contained false statements. Contrary to the basis provided for in the warrant, the PRB did not impose electronic monitoring as a condition of Smith’s parole, and neither Anderson nor any other IDOC agent attempted to place Smith in a suitable host site at the time the warrant was issued. Therefore, Anderson did not have reasonable suspicion to issue the PVR that resulted in Smith’s incarceration from March 24, 2014 until September 24, 2014. This unreasonable seizure violated Smith’s Fourth Amendment rights.

Finally, the constitutional violation caused by Anderson was “clearly established” at the time of Smith’s arrest. A right is “clearly established” where it is “sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). It was clearly established that “immunity does not extend ‘[w]here the judicial finding of probable cause is based solely on information the officer knew to be false or would have known was false had he not recklessly disregarded the truth.’” *Betker v. Gomez*, 692 F.3d 854, 864 (7th Cir. 2012) (citing *Olson*, 771 F.2d at 281). In such a circumstance, a “reasonably well-trained police officer would have known that the arrest was illegal.” *Olson*, 771 F.2d at 281; *see also Washington v. Haupert*, 481 F.3d 543, 551 (2007)

(noting a reasonable police officer would know submitting a fabricated police report to be violating the right against unreasonable searches). Given the facts, Anderson was “either incompetent or a knowing violator of the law”. In either case, Anderson is not entitled to qualified immunity.

CONCLUSION

For the foregoing reasons, petitioner, Charles Smith, respectfully requests this Court to grant this petition for writ of certiorari.

Respectfully submitted,

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APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

No. 16-2333

CHARLES SMITH,

Plaintiff-Appellant,

v.

PAUL ANDERSON,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 15 cv 2330 — **Charles P. Kocoras**, Judge.

ARGUED SEPTEMBER 12, 2017 — DECIDED OCTOBER 31, 2017

Before BAUER, EASTERBROOK, and KANNE, *Circuit Judges*.

KANNE, *Circuit Judge*. Charles Smith, a registered sex offender, was convicted of driving with a revoked license and sentenced to one year's imprisonment followed by one year's mandatory supervised release. To begin his supervised release—often called parole—Smith needed the Illinois Department of Corrections to approve a host site. On his release date Smith submitted two host sites. At that time, the Department had not investigated or approved the proposed sites. A

parole supervisor therefore ordered Smith's parole officer, Paul Anderson, to issue a parole violation report rather than release Smith.

Anderson's parole violation report contained incorrect statements. Principally, the report claimed that electronic monitoring was a condition of Smith's supervised release. It also noted that the Department had attempted to place Smith at a host site that would allow him to comply with the electronic monitoring requirement. Neither statement was accurate.

Smith spent another six months in custody before the Department released him on good-time credit. He sued his parole officer, Paul Anderson, under 42 U.S.C. § 1983 for an alleged violation of the Fourth Amendment. The district court granted Anderson's motion for summary judgment.¹ We affirm.

I. ANALYSIS

For relief under section 1983, a plaintiff must demonstrate that the defendant is not entitled to qualified immunity. *See, e.g., Werner v. Wall*, 836 F.3d 751, 758–9 (7th Cir. 2016). To do so, the plaintiff must show that the defendant violated a clearly established statutory or constitutional right. *Id.* Here, Smith cannot demonstrate that Anderson violated a clearly established constitutional right, even when we view the facts in the light most favorable to him.

¹ Smith also alleged state-law claims. The district court found that Smith failed to meaningfully assert any of them. Smith did not challenge that ruling in his opening brief, and thus, forfeited those claims. *See, e.g., Anderson v. Litscher*, 281 F.3d 672, 675 (7th Cir. 2002).

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Smith brings his 1983 claim for an alleged violation of the Fourth Amendment. He argues that Anderson's parole violation report led the Department to hold him beyond his release date. Because Anderson lacked reasonable suspicion for the facts that formed the basis of his report, Smith insists that the report violated the Fourth Amendment. *See Knox v. Smith*, 342 F.3d 651, 657 (7th Cir. 2003) (noting that the seizure of a parolee without reasonable suspicion could violate the Fourth Amendment).

Qualified immunity bars Smith's claim. No court has held that the Fourth Amendment compels the release of sex offenders who lack lawful and approved living arrangements. *Brown v. Randle*, 847 F.3d 861, 864 (7th Cir. 2017). Thus, when sex offenders lack these arrangements, their continued detention does not violate clearly established rights. In such circumstances, the officers responsible for their detention are entitled to qualified immunity. *Id.*

That is the situation here. Indeed, Illinois law requires the Department to ensure that inmates have proper and approved residences before releasing them on parole. Ill. Admin. Code tit. 20, § 1610.110. It also authorizes the Department to hold inmates until it has approved their living arrangements. *Id.* As of his release date, Department had not approved Smith's host site. Thus, Smith's continued detention did not violate a clearly established right.

Smith insists that the Department had approved his host site. He claims that in the absence of additional conditions imposed by statute or the parole board, an inmate satisfies section 1610.110's approval requirement by submitting any site that allows law enforcement to monitor the parolee. Thus, Smith contends, the Department automatically approved his

site when he submitted his mother's residence and she agreed to host him.

Of course, that cannot be the case. The Department's approval—not the inmate's submission—entitles an inmate to release under the Code. And despite Smith's contentions, the Department's approval is neither mechanical nor automatic. In fact, the Department later denied both of Smith's sites.

II. CONCLUSION

On Smith's release date, the Department had not approved his host site. Instead of releasing Smith, Anderson submitted a parole violation report. The report contained errors. But because no court has held that the Fourth Amendment requires prisons to release sex offenders who lack lawful and approved places to live, Anderson's incorrect statements—even if baseless—cannot form the basis of liability under section 1983.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHARLES SMITH,	)	
	)	
Plaintiff,	)	
	)	15 C 2330
v.	)	
	)	
Paul Anderson,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

This matter comes before the Court on Defendant Paul Anderson's ("Anderson") motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 ("Rule 56") against Plaintiff Charles Smith ("Smith"). Jurisdiction is predicated on 28 U.S.C. §§ 1343 and 1367. For the following reasons, the motion for summary judgment is granted.

BACKGROUND

The following facts are taken from the parties' respective statements and exhibits filed pursuant to Northern District of Illinois Local Rule 56.1 ("Local Rule 56.1"). The Court reviews each Local Rule 56.1 statement and disregards any argument, conclusion, or assertion unsupported by the evidence in the record. The parties do not dispute the facts below unless otherwise noted.

Smith is a former inmate of the Illinois Department of Corrections (“IDOC”). Dkt. 42, ¶ 1. He was “convicted of two felonies: (1) Criminal Sexual Assault in 2001 for which he was sentenced to eight years of imprisonment and three years of Mandatory Supervised Release . . . and (2) Driving with a Revoked License in 2013 for which he was sentenced to one year of imprisonment and one year of” Mandatory Supervised Release (“MSR”). *Id.*, ¶ 2. Anderson has been a parole agent with the IDOC since 2004. *Id.*, ¶ 4. As a parole agent, Anderson monitors “individuals assigned to his caseload who are serving terms of MSR to ensure that those individuals comply with the conditions established for them by the Prisoner Review Board (“PRB”).” *Id.*, ¶ 5. Anderson “is also responsible for writing violation reports and investigating potential host sites as directed by his supervisor.” *Id.*, ¶ 6. In 2014, Anderson was assigned to the Sex Offender Supervision unit. *Id.*

“[W]hen an inmate is transferred to an IDOC reception and classification center from a county jail, the inmate participates in an intake process, which includes a calculation of the inmate’s sentence by the record office.” *Id.*, ¶ 7. An inmate’s MSR date is determined “on the day that inmate is transferred to IDOC custody.” *Id.* “IDOC inmates who have completed a term of incarceration are required by law to serve a term of MSR.” *Id.*, ¶ 8. Prior to being released on MSR, an IDOC inmate must have an approved host site. *Id.* When an inmate is transferred to the IDOC on their MSR date, the inmate submits “potential MSR host sites and the Field Services Office, in conjunction with the Parole Re-entry Group, [] determine whether the

inmate [can] be released to a transitional housing site.” *Id.*, ¶ 11. Sex offenders cannot be released to transitional housing sites. *Id.*, ¶ 12. Consequently, a host site must be approved. *Id.*, ¶ 8. A “gate violation” report is submitted “for inmates who do not have suitable host sites when they become eligible for MSR.” *Id.*, ¶ 9.¹

On March 24, 2014, Smith was transferred from the Cook County Jail to the IDOC. *Id.*, ¶ 19. At that time, Smith had completed his “term of imprisonment for the 2013 felony conviction.” *Id.* However, he was required to serve a “one-year term of MSR on the 2013 felony conviction.” *Id.*, ¶ 20. Thus, Smith was transferred to the IDOC on the same day that his term of MSR started. Upon arrival, Smith “submitted two potential host sites.” *Id.*, ¶ 21. Smith admits that these host sites were never approved. *Id.*, ¶ 35. Smith also admits that “IDOC inmates must have an approved host site before they can be released to serve a term of parole.” *Id.*, ¶ 8.

Anderson prepared a gate violation report for Smith indicating that Smith did not have an approved host site on March 24, 2014 when he was transferred to the IDOC. *Id.*, ¶ 23. Although Smith disputes the justification for why this gate violation was drafted, the record confirms that Anderson was directed by his supervisor to write a gate violation report because Smith did not have an approved host site. *See* Dkt. 39-2, Ex. B ¶¶ 4, 5; Dkt. 39-3, Ex. C p. 3. Smith also disputes that his potential host sites

¹ Smith failed to respond to paragraph nine of Anderson’s Local Rule 56.1 Statement Of Uncontested Facts In Support Of His Motion for Summary Judgment. “A litigant’s failure to respond to a statement of fact in a Local Rule 56.1 Statement results in the court considering the uncontroverted statement admitted.” *Sanchez v. Walker*, No. 09 C 2289, 2010 WL 5313815, at *2 (N.D. Ill. Dec. 17, 2010).

were “investigated for approval.” Dkt. 42, ¶ 31. But the record demonstrates that one host site was investigated and denied on April 9, 2014 (because the resident rejected Smith’s transfer to that location), Dkt. 39-3, Ex. C p. 7, and the other host site (his mother’s house) was investigated and denied on or about June 6, 2014 (due to the presence of children and internet access). *See* Dkt. 39-2, Ex. B ¶¶ 7, 8; *and* Dkt. 39-3, Ex. C p. 8. In fact, Smith admitted in his deposition that the second potential host site (his mother’s house) was investigated in May or June of 2014, Dkt. 39-1, Pl. Dep. 29:15-24; 30:5-13, and that field services repeatedly informed him that his host sites were “under investigation.” Dkt. 39-1, Pl. Dep. 34:17-21; 38:21-23. Although Smith disputes that any other sites were actually investigated, *see id.* at 28-29, he has adduced no evidence to contradict that both of his potential host sites were in fact investigated and denied, or the reasons for which they were denied. Nor does Smith dispute that, in the absence of an approved host site, neither Anderson nor the IDOC had the ability to release him, since “IDOC inmates must have an approved host site before they can be released to serve a term of parole.” Dkt. 42, ¶ 8.

LEGAL STANDARD

Summary judgment is appropriate when the movant establishes that “there is no genuine dispute as to any material fact and [that] the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A genuine issue of material fact arises where a reasonable jury could find, based on the evidence of record, in favor of the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A motion for

summary judgment requires the Court to construe all facts and to draw all reasonable inferences in favor of the non-movant. *Id.* at 255.

Local Rule 56.1(a) requires the “party moving for summary judgment to include with that motion ‘a statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a judgement as a matter of law.’” *Ammons v. Aramark Unif. Servs., Inc.*, 368 F.3d 809, 817 (7th Cir. 2004) (quoting N.D. Ill. R. 56.1(a)(3)). The movant bears the initial burden of establishing that no genuine issue of material fact exists. *Genova v. Kellogg*, 12 C 3105, 2015 WL 3930351, at *3 (N.D. Ill. June 25, 2015). “The burden then shifts to the nonmoving party to show through specific evidence that a triable issue of fact remains on issues on which the movant bears the burden of proof at trial.” *Id.* The non-moving party must respond to the movant’s Local Rule 56.1(a)(3) statement and may not rest upon mere allegations in the pleadings or upon conclusory statements in affidavits. N.D. Ill. R. 56.1(b); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). The non-movant must go beyond the pleadings and support his contentions with documentary evidence of specific facts that demonstrate that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324.

DISCUSSION

In his complaint, Smith states that “[t]his is a claim for violation of plaintiff’s civil rights as protected by the Constitution and laws of the United States under 42 U.S.C. §§ 1983, 1985, 1986.” Dkt. 8, ¶ 1. He “also claims violation of rights that

may be protected by the laws of Illinois, such as false arrest, assault, battery, false imprisonment, malicious prosecution, conspiracy, and/or any other claim that may be supported by the allegations of this complaint.” *Id.*, ¶ 14. Anderson asserts that Smith “fails to specify any particular provision of the Constitution on which his claims are based[.]” however, Anderson argues, “[i]t appears from the nature of the facts alleged in the complaint that [Smith] believes he was subjected to false arrest and false imprisonment based on a warrant prepared by Agent Anderson.” Dkt. 38, p. 5. Smith contends that the “warrant” prepared by Anderson (the gate violation report that Anderson prepared in March 2014) contained false statements. Dkt. 43, p. 1. Based on the allegations in the complaint, the motion for summary judgment addresses Smith’s 42 U.S.C. § 1983 false imprisonment claim, as well as his state law claims. Although the motion for summary judgment does not explicitly address Smith’s 42 U.S.C. § 1983 false arrest claim, because Smith relies on the same set of facts in support of both his false imprisonment claim and false arrest claim, and because the inquiry would be similar for both claims, the Court addresses whether a genuine issue of material fact exists as to either claim.

I. 42 U.S.C. § 1983 Claims for False Arrest and False Imprisonment

“To survive summary judgment of a claim brought under § 1983, this court focuses on ‘(1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States.’”

Armato v. Grounds, 766 F.3d 713, 720 (7th Cir. 2014) (quoting *Parratt v. Taylor*, 451 U.S. 527, 535 (1981)). In the instant matter, Anderson acted under state law as he was employed as a parole agent with the IDOC and he was following state law procedures when making decisions regarding Smith's release. *See id.* Therefore, to survive the motion for summary judgment, Smith must "establish that a reasonable trier of fact could find that he was deprived of his constitutional rights by being detained beyond his release date." *Id.*

To prevail on a claim for false arrest, Smith "must establish that the Government's conduct constituted a seizure and that seizure was unreasonable." *Aguero v. City of Chi.*, No. 08-cv-6689, 2010 WL 2640370, at *3 (N.D. Ill. June 3, 2010); *see also Bielanski v. Cnty. of Kane*, 550 F.3d 632, 637 (7th Cir. 2008). Likewise, "a detention may rise to the level of false imprisonment if it is significant enough to inhibit an individual's constitutional liberties." *Id.* "A § 1983 false imprisonment claim seeks damages for injury caused by the plaintiff's detention without probable cause." *Id.* (quoting *Nat'l Cas. Co. v. McFatridge*, 604 F.3d 335, 344 (7th Cir. 2010)). In order for Smith's false arrest claim and false imprisonment claim to survive the motion for summary judgment, as the non-movant, Smith was required to provide documentary evidence of specific facts illustrating that there is a genuine issue for trial. However, by his own admissions Smith has demonstrated that there is no genuine issue regarding (i) whether Anderson's conduct amounted to an

unreasonable seizure or (ii) whether Smith was detained without probable cause. Accordingly, the motion for summary judgment must be granted.

On March 24, 2014, Smith was transferred from the Cook County Jail to the IDOC. Dkt. 42, ¶ 19. That same day, his term of MSR started. *Id.* Upon arrival, Smith “submitted two potential host sites.” *Id.*, ¶ 20. Smith admits that these host sites were never approved. *Id.*, ¶ 35; *see also* Dkt. 39-1 Pl. Dep. 35:24; 36:1-3. He also admits that “IDOC inmates must have an approved host site before they can be released to serve a term of parole.” Dkt. 42, ¶ 8. Moreover, the Illinois Administrative Code, §1610.110 provides that:

a) When an order for release on parole is entered, it shall not be effective and the applicant shall not be released until the Office of Adult Parole Services or Family and Youth Counseling Services has satisfied itself that suitable arraignments have been made for:

1) The applicant’s gainful employment and/or education or training programs *and for a proper and approved residence.*

2) The chief administrative officer of the institution shall have the authority *to hold the prospective parolee until these arrangements have been approved . . .*

(emphasis added). *Murdock v. Walker*, No. 08 C 1142, 2014 WL 916992, at *10 (N.D. Ill. Mar. 10, 2014) (quoting 20 Ill. Admin. Code § 1610.110). Despite these provisions, Smith argues that he “was admitted into IDOC, released, and then admitted back in to IDOC due to an invalid arrest warrant issued by defendant Anderson,” Dkt. 45, ¶ 11, citing a one-page document listing Smith as released and re-admitted to the IDOC on March 24, 2014. *See* Dkt. 45, Ex. A. But there is no dispute

that Smith was not actually released on that date; nor could he be, because he had no approved host site. The record is thus consistent with the fact that the IDOC was unable to release Smith, and did not do so, on March 24, 2015. Moreover, the Illinois Administrative Code demonstrates that even if an order for release on parole is entered, it does not become effective until certain conditions are met. 20 Ill. Admin. Code § 1610.110. Here, although Smith was approved for release on parole, the IDOC was prohibited, by law, from releasing him because his host sites had not been approved. Smith appears to understand this principle as he admits that in order to be released on MSR he needed an approved host site. He also admits that no such host site was ever approved. Consequently, the IDOC had the authority to “hold” Smith until his parole arrangements had been approved. Therefore, there is no genuine issue as to whether or not the purported “seizure” Smith alleges was reasonable.

Additionally, when an inmate is released on parole, “[t]he IDOC retains custody of all prisoners released on parole and is charged with supervising those persons during their release ‘in accord with the conditions set by the [PRB].’” *Murdock*, 2014 WL 916992, at * 2 (quoting 730 ILCS 5/3-14-2). As required by law, Smith was not released on MSR because he admittedly failed to satisfy the housing conditions. *See id.*, at *10 (“[t]he housing conditions must be satisfied or an inmate cannot be released.”) Thus, Smith’s admissions demonstrate that there is no genuine issue of material fact regarding whether or not Anderson had probable cause to detain

Smith and no reasonable jury could find in his favor on the 42 U.S.C. § 1983 false arrest claim or the 42 U.S.C. § 1983 false imprisonment claim.

Smith attempts to avoid this result by recasting the issue. According to Smith, “[t]his is not a case of whether plaintiff had an approved host-site or not. It is a case of whether the defendant intentionally falsified a warrant affidavit to have the plaintiff intentionally arrested, imprisoned and maliciously prosecuted.” Dkt. 43, p. 7. Smith contends that the “warrant” (the March 24, 2014 gate violation report) “was not accurate because electronic monitoring was not part of the conditions of his MSR,” at that time, and was only “added as a condition of Plaintiff’s MSR in May, 2014.” Dkt. 42, ¶ 25-26. Regardless of any other information that Anderson included to justify issuing the parole violation, Smith admits that he could not be released until a host site was approved, while he was in custody at the IDOC. *Id.*, ¶ 8. Again, the law requires the IDOC to keep an inmate in custody until a host site has been approved, irrespective of whether or not the PRB sets a specific date for release on parole, and Smith does not dispute this. Accordingly, the facts that Smith does dispute do not create a genuine issue for trial regarding whether Smith lawfully remained in the custody of the IDOC.

II. State Law Claims

Beyond the conclusory statement in his complaint, that he is asserting a claim for malicious prosecution under Illinois state law, Smith’s memorandum in response to Anderson’s summary judgment motion is the first time he includes any details

regarding his malicious prosecution claim. *See* Dkt. 43, p. 3-7. It is also the first time he raises a Fourth Amendment malicious prosecution claim, which he refers to as “a claim for malicious [prosecution] under section 1983.” *Id.*, p. 4. It is unclear whether Smith is attempting to transform his false arrest claim and his false imprisonment claim, pursuant to 42 U.S.C. § 1983, into a Fourth Amendment malicious prosecution claim, or whether he is attempting to amend his complaint with details that support a state law malicious prosecution claim. Nevertheless, both arguments fail.

As Anderson correctly argues, “[a] plaintiff may not amend his complaint through arguments in his brief in opposition to a motion for summary judgment.” *Insolia v. Philip Morris Inc.*, 216 F.3d 596, 606 (7th Cir. 2000) (quoting *Shanahan v. City of Chi.*, 82 F.3d 776, 781 (7th Cir. 1996)). Thus, Smith’s state law malicious prosecution claim fails. Moreover, Anderson correctly asserts that while “Illinois provides for a malicious prosecution tort, no federal claim is available.” Dkt. 54, p. 3; *see Parish v. City of Chi.*, 594 F.3d 551, 553-54 (7th Cir. 2009) (the Seventh Circuit does not recognize “a federal claim in the nature of malicious prosecution.”) Therefore, Smith cannot establish a claim for malicious prosecution under federal law.

Smith’s only mention of his state law false arrest, assault, battery, false imprisonment, and conspiracy claims appear in paragraph fourteen of the complaint, where he states that he is also pursuing claims for “violation of rights that may be protected by the laws of Illinois, such as false arrest, assault, battery, false imprisonment, malicious prosecution, conspiracy, and/ or any other claim that may be

supported by the allegations of this complaint.” Dkt. 8, ¶ 14. As Anderson argues, “this statement is vague” and “the factual basis for any such claims [is] unclear.” Dkt. 38, p. 10. The Court agrees. The complaint is devoid of any factual details that would support Smith’s state law claims. “Judges are not clairvoyant, and if they were required to go out of their way to analyze every conceivable argument not meaningfully raised, their work would never end.” *Williams v. Dieball*, 724 F.3d 957, 963 (7th Cir. 2013). Smith has failed to meaningfully assert any state law claims, leaving nothing for this Court to rule on regarding the existence of a state law claim for false arrest, assault, battery, false imprisonment, or conspiracy.

CONCLUSION

For the aforementioned reasons, Defendant Paul Anderson’s motion for summary judgment, Dkt. 37, is granted. It is so ordered.



Charles P. Kocoras
United States District Judge

Dated: 5/23/2016

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Charles Smith,

Plaintiff(s),

v.

Paul Anderson,

Defendant(s).

Case No. 15 cv 2330

Judge Charles P. Kocoras

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of \$,

which ☐ includes pre-judgment interest.
☐ does not include pre-judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☒ other: Judgment entered in favor of defendant Paul Anderson and against Charles Smith.

This action was (check one):

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Charles P. Kocoras on a motion for summary judgment.

Date: 5/23/2016

Thomas G. Bruton, Clerk of Court

Vettina Franklin, Deputy Clerk