

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WISCONSIN

Robert C. McMath v. Julio de Lima Silva

McMath v. de Lima Silva · No. 24-C-20 · Decided February 27, 2026

SUMMARY

The United States District Court for the Eastern District of Wisconsin partially grants the defendant’s motion for summary judgment in Robert McMath’s 42 U.S.C. § 1983 action. The court dismisses McMath’s First Amendment retaliation claim but finds factual disputes requiring trial on his Eighth Amendment failure-to-protect claim. The court also grants McMath’s motion to recruit counsel for trial.

CASE DETAILS

COURT	United States District Court for the Eastern District of Wisconsin
WRITING FOR THE COURT	William C. Griesbach
JURISDICTION	United States District Court for the Eastern District of Wisconsin
DECIDED	February 27, 2026
DOCKET	24-C-20
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff brought an action under 42 U.S.C. § 1983 asserting an Eighth Amendment failure-to-protect claim and a First Amendment retaliation claim. Defendant moved for summary judgment.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court viewed the evidence and drew reasonable inferences in favor of the nonmoving party.
PRECEDENTIAL VALUE	unpublished district court opinion
PARTIES	Robert C. McMath v. Julio de Lima Silva

TOPICS

- summary judgment
- prisoners rights
- qualified immunity
- first amendment
- cruel and unusual punishment

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether genuine disputes of material fact precluded summary judgment on McMath's Eighth Amendment failure-to-protect claim.
2. Whether Sgt. de Lima Silva was entitled to qualified immunity on the Eighth Amendment claim.
3. Whether McMath produced evidence sufficient to create a genuine dispute that his protected inmate complaint was a motivating factor in Sgt. de Lima Silva's allegedly retaliatory conduct.
4. Whether defendant was entitled to summary judgment on the First Amendment retaliation claim.

HOLDINGS

1. Summary judgment was improper because evidence, viewed in McMath's favor, could allow a jury to find that a substantial risk of serious harm existed, that Sgt. de Lima Silva recognized the risk, and that he was deliberately indifferent by allowing Parker to enter the cell.
2. Sgt. de Lima Silva was not entitled to qualified immunity at the summary-judgment stage because, if McMath's version of events were accepted, the conduct violated a clearly established Eighth Amendment right.
3. Defendant was entitled to summary judgment on McMath's First Amendment retaliation claim because McMath offered no evidence, beyond speculation, that his inmate complaints motivated Sgt. de Lima Silva's conduct.

KEY QUOTATIONS

“Summary judgment is appropriate when the moving party shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” (Legal Standard)

“If a jury were to believe this version of events, the jury could reasonably draw an inference that a substantial risk of harm existed, that Sgt. de Lima Silva in fact recognized that risk, and that, by allowing Inmate Parker to enter the cell, Sgt. de Lima Silva was deliberately indifferent to the risk to McMath’s safety.” (Analysis § A)

“For these reasons, Sgt. de Lima Silva’s motion for summary judgment (Dkt. No. 72) is GRANTED-IN-PART and DENIED-IN-PART.” (Conclusion)

FACTUAL BACKGROUND

McMath was incarcerated at Waupun Correctional Institution when Sgt. de Lima Silva, a temporary supplemental staff employee unfamiliar with the inmates and cell assignments, escorted inmate Parker to a cell. The parties disputed whether McMath and other inmates warned de Lima Silva before the cell door opened that Parker threatened McMath, possessed a shank, and did not belong in the cell. Parker entered and attacked McMath, after which de Lima Silva called for backup and intervened. McMath also alleged that de Lima Silva retaliated against him because McMath had filed an inmate complaint against Officer Lange, but the record contained no evidence beyond McMath's speculation and his assertion that he saw the two officers talking.

PROCEDURAL HISTORY

McMath filed suit against Sgt. de Lima Silva concerning an inmate attack at Waupun Correctional Institution and alleged retaliation for an inmate complaint against another officer. On defendant's motion for summary judgment, the court dismissed the First Amendment retaliation claim but denied summary judgment on the Eighth Amendment failure-to-protect claim, which will proceed to trial. The court also granted McMath's motion to recruit counsel.

DISPOSITION

other

CASES CITED

- Johnson v. Advocate Health & Hosps. Corp., 892 F.3d 887, 893 (7th Cir. 2018)
- Parker v. Four Seasons Hotels, Ltd., 845 F.3d 807, 812 (7th Cir. 2017)
- Siegel v. Shell Oil Co., 612 F.3d 932, 937 (7th Cir. 2010)
- Austin v. Walgreen Co., 885 F.3d 1085, 1087–88 (7th Cir. 2018)
- Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)
- Brown v. Budz, 398 F.3d 904, 909 (7th Cir. 2005)
- Farmer v. Brennan, 511 U.S. 825, 833–34, 837 (1994)
- Dale v. Poston, 548 F.3d 563, 569 (7th Cir. 2008)
- Borello v. Allison, 445 F.3d 742, 747 (7th Cir. 2006)
- Giles v. Tobeck, 895 F.3d 510, 513 (7th Cir. 2018)
- LaBrec v. Walker, 948 F.3d 836, 846 (7th Cir. 2020)
- Walker v. Benjamin, 293 F.3d 1030, 1040 (7th Cir. 2002)
- Payne v. Pauley, 337 F.3d 767, 776–81 (7th Cir. 2003)
- Douglas v. Reeves, 964 F.3d 643, 646 (7th Cir. 2020)
- Debvrow v. Gallegos, 735 F.3d 584, 588 (7th Cir. 2013)
- Manuel v. Nalley, 966 F.3d 678, 681 (7th Cir. 2020)
- Lauder milk v. Best Pallet Co., 636 F.3d 312, 315 (7th Cir. 2011)

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