MEMORANDUM DECISION

APPELLANT PRO SE

Anthony Wayne Reed
South Bend, Indiana

ATTORNEYS FOR APPELLEES

Theodore E. Rokita
Attorney General of Indiana

David A. Arthur
Senior Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Anthony Wayne Reed,
Appellant-Plaintiff,

v.

Leann White and Darrin Chaney,
Appellees- Defendants.

March 22, 2021

Court of Appeals Case No. 20A-MI-611

Appeal from the Putnam Superior Court

The Honorable Michael Rader, Judge

Trial Court Cause No. 67D01-1706-MI-30

Tavitas, Judge.

Case Summary

[1] In 2015, Anthony Reed was an inmate at the Putnamville Correctional Facility ("PCF") in Greencastle, Indiana. Reed made four crosses attached to necklaces and attempted to send them to his family members. Clerical assistant, Leann White, discovered that three of the necklaces were returned due to insufficient postage, prompting Darrin Chaney, the internal affairs investigator and Security Threat Group ("STG") Coordinator at PCF, to confiscate the necklaces as contraband. Inmates at PCF are prohibited from possessing jewelry, as it may indicate gang affiliation. Reed felt that his personal property had been confiscated in an unfair manner and that he was entitled to its return in accordance with prison policy. Moreover, Reed contended that he had not received the proper, formal notice of the confiscation.

[2] After exhausting his administrative remedies, Reed filed suit in Putnam County Circuit Court. The trial court dismissed the claims for failure to state a claim upon which relief could be granted, and Reed successfully appealed. On remand, White and Chaney moved for summary judgment as to all claims, which the trial court granted. Finding that Reed's claims are unauthorized under the Indiana Tort Claims Act, and that Reed has not asserted a valid claim under 42 U.S.C. § 1983, we affirm.

Issue

[3] Reed raises numerous issues, which we consolidate and restate as whether the trial court erred when it granted summary judgment to White and Chaney on all claims.

Facts

[4] The facts, as stated in Reed's prior appeal, follow:

> On December 11, 2015, Reed, who was then incarcerated at the Putnamville Correctional Facility ("PCF"), mailed four handmade crosses to family members. However, on December 30, two envelopes containing three of the crosses were returned to PCF for insufficient postage. Reed was notified of the problem, but the crosses were not returned to him, and he was not able to resend them to his family members. Reed later learned that White, who worked in the PCF mail room,[1] had confiscated the crosses.[2] White, in turn, gave the crosses to Chaney, an internal affairs officer for the PCF Security Threat Group ("STG").[3]
>
> After Reed filed an informal grievance with PCF on January 20, 2016, he was informed that "STG policy 02-03-105 prohibits the possession, making or display of any handmade jewelry (rings,

---

[1] One of White's regular job functions at the time was to process incoming mail by opening it and examining it.

[2] The State disputes this characterization, arguing that White merely brought the crosses to Chaney. Chaney, in turn, identified them as contraband, and it was at that point that they could officially be considered confiscated.

[3] STG is defined by DOC's internal policies as: "A group of offenders that set themselves apart from others; pose a threat to the security or safety of staff or offenders; or [ ] are disruptive to programs or the orderly management of the facility." Appellees' App. Vol. II p. 56

> necklaces and bracelets) by [the] offender population as these items can be used to show STG [sic] affiliation by utilizing color and symbols." Appellant's App. at 13. Reed responded by stating that the colors used in making the crosses were "not in any way connected with any (known) Gang-memberships." *Id.* at 15. Reed then filed with the Indiana Department of Correction ("[ ]DOC") a Grievance Appeal, which was denied.
>
> On June 13, Reed filed a tort claim notice with IDOC, and on October 26, Reed filed a complaint against White and Chaney with the trial court. In his complaint, Reed alleged that the reason given for White's confiscation of the crosses was invalid, White did not follow [ ]DOC policies governing the seizure of items in the mail, and White and Chaney committed "criminal conversion" when they took the crosses. *Id.* at 20. The trial court dismissed Reed's complaint, stating that he had failed to state a claim upon which relief can be granted, "as the Defendants were following [ ]DOC policies and procedures." Appellant's Br. at 12.

Reed v. White, 103 N.E.3d 657, 658-59 (Ind. Ct. App. 2018).

[5] White and Chaney filed a motion to dismiss all claims, which the trial court granted on July 21, 2017. In an ensuing appeal, a panel of this Court reversed, finding that:

> [T]he assertion of immunity is an affirmative defense, and dismissal for failure to state a claim upon which relief can be granted is "rarely appropriate when the asserted ground for dismissal is an affirmative defense." *Bellwether Prop., LLC v. Duke Energy Ind.*, Inc., 87 N.E.3d 462, 464 (Ind. 2017). Here, if Reed had alleged in his complaint that White and Chaney were acting within the scope of their employment, dismissal under Indiana Code Section 34-58-1-2(a)(2) would have been appropriate. *See*

> *Bushong v. Williamson*, 790 N.E.2d 467, 472 n.4 (Ind. 2003). But Reed makes no such allegation. Accordingly, looking only at the face of Reed's complaint, there is no basis to dismiss the complaint because of White's and Chaney's possible immunity defenses.
>
> Second, taking the facts stated in Reed's complaint as true, as we must, there was no basis in any IDOC policy for White and Chaney to have confiscated the crosses. To the contrary, Reed alleges that the crosses did not violate the STG policy, and he maintains that White and Chaney's reliance on that stated policy was merely a "pretense" to obscure their alleged theft of Reed's personal property. Appellant's App. at 12. Reed's allegations may prove incorrect at a fact-finding hearing, but they state a claim.
>
> In sum, taking as true all allegations upon the face of Reed's complaint, we hold that the trial court erred when it dismissed the complaint for failure to state a claim upon which relief can be granted. The complaint is sufficient under Indiana Code Section 34-13-3-5(c) to require White and Chaney to respond thereto. *See Guillen*, 922 N.E.2d at 123 (reversing dismissal of offender's complaint alleging prison officials negligently or deliberately violated both the Indiana Constitution and prison mail rules).

Id. at 660-61.

[6] On remand, White and Chaney moved for summary judgment as to all claims. Reed filed a response. On February 6, 2020, without a hearing, the trial court granted the motion for summary judgment. Reed now appeals.

Analysis

[7] Summary judgment is appropriate only when the moving party shows there are no genuine issues of material fact for trial and the moving party is entitled to judgment as a matter of law. *Erie Indem. Co. for Subscribers at Erie Ins. Exch. v. Estate of Harris by Harris*, 99 N.E.3d 625, 629 (Ind. 2018); *see also* Ind. Trial Rule 56(C). Once that showing is made, the burden shifts to the nonmoving party to designate appropriate evidence to demonstrate the actual existence of a genuine issue of material fact. *See, e.g., Schoettmer v. Wright*, 992 N.E.2d 702, 705-06 (Ind. 2013).

[8] When ruling on the motion, the trial court construes all evidence and resolves all doubts in favor of the non-moving party. *Id.* at 706. We review the trial court's ruling on a motion for summary judgment de novo, and we take "care to ensure that no party is denied his day in court." *Id.* "We limit our review to the materials designated at the trial level." *Gunderson v. State, Indiana Dep't of Nat. Res.*, 90 N.E.3d 1171, 1175 (Ind. 2018), *cert. denied*. (citing *Fraternal Order of Police, Lodge No. 73 v. City of Evansville*, 829 N.E.2d 494, 496 (Ind. 2005). ". . . [B]ut [we are] constrained to neither the claims and arguments presented at trial nor the rationale of the trial court ruling. *Manley v. Sherer*, 992 N.E.2d 670, 673 (Ind. 2013) (citing *Woodruff v. Ind. Family & Soc. Servs. Admin.*, 964 N.E.2d 784, 790 (Ind. 2012), *cert. denied*) ("We will reverse if the law has been incorrectly applied to the facts. Otherwise, we will affirm a grant of summary judgment upon any theory supported by evidence in the record."); *see also Wagner v. Yates*, 912 N.E.2d 805, 811 (Ind. 2009) ("[W]e are not limited to reviewing the trial

court's reasons for granting or denying summary judgment but rather we may affirm a grant of summary judgment upon any theory supported by the evidence.").

[9] With respect to prison contraband cases, the legislature has conferred upon the DOC, of which PCF is a part, the authority to determine which property an offender may possess. Ind. Code § 11-11-2-2. "When a prison notifies an offender of what items (s)he may possess, all other property that is not contraband becomes 'prohibited property.'" *Yisrayl v. Reed*, 98 N.E.3d 644, 646–47 (Ind. Ct. App. 2018) (quoting Ind. Code § 11-11-2-2), *trans. denied*. "Contraband" is defined as "property the possession of which is in violation of an Indiana or federal statute"; and "[p]rohibited property" is defined as "property other than contraband that the [DOC] does not permit a confined person to possess . . . ." Ind. Code § 11-11-2-1. "The [DOC] may conduct reasonable searches of its facilities and persons confined in them and may seize contraband or prohibited property." Ind. Code § 11-11-2-3(a). When the DOC seizes property, the DOC must "give . . . written notice of the seizure," including the date of seizure, identity of the seizing party, grounds for seizure, and the procedure for challenging the seizure. Ind. Code § 11-11-2-4.

[10] The record reflects that Reed did not receive a formal notification including the date of the confiscation and reasons therefore, in contravention of DOC policy and the Indiana Code. Reed relies heavily on this fact. Chaney's explanation for lack of formal notice to Reed differs from the reason for confiscation: the crosses/necklaces were partially comprised of string, which could only have

come from the prison itself, rather than being legitimately obtained by Reed from the commissary. Thus, Chaney reasoned, the necklaces were State property, and not offender property subject to the rule requiring formal notice.

[11] As a threshold matter, Reed first contends that this is a specific disputed material fact—namely, whether the necklaces were comprised, in part, of string. We do not find, however, that this is a *material* issue of fact. String or not, the necklaces did constitute "jewelry." Thus, it was in accordance with the policy prohibiting jewelry that could indicate an STG affiliation that the necklaces were confiscated. The composition of the contraband was the prison's stated justification for not issuing the usual notice of confiscation to Reed but was not the basis for the confiscation. Reed conflates the two. There is no material issue of fact remaining with respect to the composition of the necklaces.[4]

I. Tort Claim Authorization

[12] We turn to Reed's state law tort claims.[5] It is well settled that an individual may not bring suit against a State without the State's consent. *See, e.g., Esserman v. Indiana Dep't of Envtl. Mgmt.*, 84 N.E.3d 1185, 1188 (Ind. 2017) ("In addition to the national government, States also enjoy sovereign immunity, which

---

[4] To the extent that Reed argues White and Chaney initially cited the composition of the necklaces as the reason for their confiscation, and later changed their story, we find nothing in the record to support that claim; nor has Reed designated any evidence, other than his own conclusory allegations, to that effect. We agree with the State that the issue is waived.

[5] Reed does not adequately articulate what form these tort claims might take. Nevertheless, in order for the claims to even potentially be cognizable, they must comply with the strictures of the Indiana Tort Claims Act.

predates the nation's founding and survived ratification of the U.S. Constitution. '[T]he States' immunity from suit is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today[.]'") (quoting *Alden v. Maine*, 527 U.S. 706, 713, 119 S. Ct. 2240 (1999)).

[13] Each of Reed's state-based claims names White and Chaney as individuals, rather than as actors in their official capacities. Indiana provides an avenue for bringing suit against the State and/or its employees via the Indiana Tort Claims Act ("ITCA"). White and Chaney may avoid individual liability if acting within the scope of their employment. *See, e.g., Niksich v. Cotton*, 810 N.E.2d 1003, 1007 (Ind. 2004) ("We have held that a state employee may rely on the facts to establish that the employee was within the scope and therefore there was no individual liability."), *cert. denied*. For claims to be authorized under the ITCA, the claims must comply with the mandates of Indiana Code Section 34-13-3-5(c), which holds:

> A lawsuit filed against an employee personally must allege that an act or omission of the employee that causes a loss is:
>
> (1) criminal;
>
> (2) clearly outside the scope of the employee's employment;
>
> (3) malicious;

(4) willful and wanton; or

(5) calculated to benefit the employee personally.

The complaint must contain a reasonable factual basis supporting the allegations.

[14] Generally speaking, "whether an employee's actions were within the scope of employment is a question of fact to be determined by the factfinder." *Knighten v. East Chicago Housing Authority*, 45 N.E.3d 788, 794 (Ind. 2015) (citation omitted). When the facts are undisputed and "would not allow a jury to find that the tortious acts were within the scope of employment," however, a court may conclude as a matter of law that the acts were not in the scope of employment. *Cox v. Evansville*, 107 N.E.3d 453, 460 (Ind. 2018).

Burton v. Benner, 140 N.E.3d 848, 852 (Ind. 2020).

[15] In the recent *Burton* decision, our Supreme Court acknowledged that "there is no precise formula to determine whether an act is 'clearly outside' the scope of employment," *id*. at 853, but nevertheless offered the following guidance regarding whether an act is considered within the scope of employment, specifically with respect to the ITCA:

> [A]n employee's act or omission falls within the scope of employment if the injurious behavior is incidental to authorized conduct or furthers the employer's business to an appreciable extent. *Knighten*, 45 N.E.3d at 792 (citation omitted). Conversely, "an employee's act is not within the scope of employment when it occurs within an independent course of conduct not intended by the employee to serve any purpose of

> the employer." *Id*. (quoting *Barnett v. Clark*, 889 N.E.2d 281, 284 (Ind. 2008)). But "an employee's wrongful act may still fall within the scope of his employment if his purpose was, to an appreciable extent, to further his employer's business, even if the act was predominantly motivated by an intention to benefit the employee himself." *Id*. Ultimately, we have found that "the scope of employment encompasses the activities that the employer delegates to employees or authorizes employees to do, plus employees' acts that naturally or predictably arise from those activities." *Cox*, 107 N.E.3d at 461.

Id. at 852. Even criminal acts may fall within the scope of employment. *See, e.g., Stropes v. Heritage House Childrens Ctr.*, 547 N.E.2d 244, 247 (Ind. 1989), *reh'g denied*.

[16] Reed asserts that neither White nor Chaney was acting within the scope of employment at the relevant time. We disagree. The undisputed facts show that one of White's job functions was to process incoming mail, which is precisely what she did. The undisputed facts show that one of Chaney's job functions was to confiscate contraband, which is precisely what he did.

[17] Moreover, the State correctly points out that, even if White and/or Chaney violated prison policy in minor ways, they still acted within the scope of their employment. Clearly their actions were intended to further the employer's business of promoting safety and security inside a DOC facility by seizing potentially dangerous contraband. The fact that Chaney or White may not have complied with the policies regarding formal notice of confiscation does not alter the reality that their conduct was well within the scope of their

employment. *Burton*, N.E.3d at 853 ("Recall that the scope of employment "may include acts that the employer expressly forbids" or 'that violate the employer's rules, orders, or instruction.' *Cox*, 107 N.E.3d at 461.").

[18] With respect to whether White and Chaney's actions were willful and wanton,[6] malicious,[7] criminal,[8] and/or intended to benefit White and Chaney personally, Reed asserts that "[t]here are disputed facts that reveal the defendants did act in numerous ways the [sic] were a little bit of all of the above." Appellant's Amended Br. p. 29. Here, Reed appears to offer a recapitulation of the argument that the prison staff originally indicated its reason for confiscation was that the necklaces were comprised, in part, of string, to which Reed should not have had access, and subsequently changed the justification for confiscation to the policy regarding jewelry. As we have already indicated, that argument is as unavailing as it is unsupported by the record. Chaney had a legitimate cause

---

[6] Willful and wanton misconduct is either:

> 1) an intentional act done with reckless disregard of the natural and probable consequence of injury to a known person under the circumstances known to the actor at the time; or 2) an omission or failure to act when the actor has actual knowledge of the natural and probable consequence of injury and his opportunity to avoid the risk.

Witham v. Norfolk and Western Ry. Co., 561 N.E.2d 484, 486 (Ind. 1990), *reh'g denied*. Such misconduct has two elements: "1) the defendant must have knowledge of an impending danger or consciousness of a course of misconduct calculated to result in probable injury; and 2) the actor's conduct must have exhibited an indifference to the consequences of his conduct." *Id*.

Higgason v. State, 789 N.E.2d 22, 30 (Ind. Ct. App. 2003).

[7] A malicious act is "[a]n intentional, wrongful act performed against another without legal justification or excuse." Black's Law Dictionary 969 (11th ed. 2019).

[8] A crime is "[a]n act that the law makes punishable; the breach of a legal duty treated as the subject-matter of a criminal proceeding." Black's Law Dictionary (11th ed. 2019).

for confiscating the necklaces. That he might have had an additional reason that could be disputed is irrelevant.

[19] Far from the statutorily required "reasonable factual basis" necessary to sustain allegations regarding the nature of their conduct, we find the record devoid of any evidence supporting the claim that either Chaney or White committed willful and/or wanton misconduct, acted maliciously, or did anything calculated to benefit them personally. Moreover, we cannot say that confiscating contraband, a job responsibility specifically authorized by the legislature, amounts to criminal conversion. Thus, there are no genuine issues of material fact preventing the entry of summary judgment, and we find that Reed's state-law claims are not authorized under the ITCA.[9] *See, e.g., Smith v. Indiana Dept. of Correction*, 871 N.E.2d 975 (Ind. Ct. App. 2007) (holding that the inmate could not prevail on his claims against the prison officers individually pursuant to Indiana Code Section 34-13-3-5).[10] The trial court properly granted summary judgment to White and Chaney on these claims.

---

[9] Given that Reed's claims are unauthorized, there is no need to reach the matter of whether White and Chaney enjoy immunity from such claims.

[10] To the extent that Reed argues that White and Chaney violated Indiana statutes and/or the Indiana Constitution, we note the well-established principle that there is no free-standing private right of action for such claims, absent a specific provision providing therefor. *See, e.g., Adams v. Arvinmeritor, Inc.*, 60 N.E.3d 1022, 1024 (Ind. 2016).

II. Federal Claims

[20] Next, Reed contends that the trial court erred in granting summary judgment to White and Chaney on Reed's federal claims. Pursuant to 42 U.S.C. § 1983 ("Section 1983"):

> [e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. . . .

[21] "The statute is not an independent source of liability but, instead, is 'a means of vindicating rights secured elsewhere.'" *Steele v. Knight*, No. 113CV00982JMSDKL, 2016 WL 7117155, at *4 (S.D. Ind. Dec. 7, 2016) (quoting *Narducci v. Moore*, 572 F.3d 313, 319 (7th Cir. 2009)). To state a viable Section 1983 claim, a plaintiff must allege that he was: (1) deprived of a federal right, privilege, or immunity (2) by any person acting under color of state law.[11] *See, e.g., Brown v. Budz*, 398 F.3d 904, 908 (7th Cir. 2005).

[22] Reed appears to claim that he was deprived of his property in contravention of the Fourth, Fifth, and Fourteenth Amendments to the United States

---

[11] We note that the trial court erroneously concluded that there was no evidence to establish that White and Chaney were acting under color of state law. In fact, they were, as are almost all state employees acting within the scope of their duties. *See, e.g., Honaker v. Smith*, 256 F.3d 477, 485 (7th Cir. 2001) ("[A]cts by a state officer are not made under color of state law unless they are related in some way to the performance of the duties of the state office.") (citing *Gibson v. City of Chicago*, 910 F.2d 1510, 1516 (7th Cir.1990); *Briscoe v. LaHue*, 663 F.2d 713, 721 n. 4 (7th Cir.1981)). No claim, however, turns on this error.

Constitution.[12] *See* Appellant's Amended Br. p. 35. Reed, however, makes no arguments and cites no authority with respect to his mention of the Fifth and Fourteenth Amendments. As such, those claims are waived. *See* Ind. App. Rule 46; *see also Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016) ("This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so. These consequences include waiver for failure to present cogent argument on appeal.") (citing *Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004)).

[23] Only Reed's nebulous Fourth Amendment Claim remains. Reed once again reiterates his contentions that White and Reed failed to comply with internal prison policies. But such conduct is of no constitutional import. We note that it is a longstanding principle of little controversy that there is no reasonable expectation of privacy, and, thus, no Fourth Amendment violation, with respect to prison mail and its confiscation. *See, e.g., Perry v. State,* 505 N.E.2d 846, 848 (Ind. Ct. App. 1987) ("[T]he inmate had no expectations of privacy because he knew that prison officials read prisoners' mail before it was sent."). Accordingly, Reed's Section 1983 claims must fail. The trial court properly granted summary judgment to White and Chaney on this claim.

---

[12] We do not address Reed's extensive arguments with respect to whether White and Chaney are "persons" for purposes of Section 1983, and whether they are amenable to suit. We agree with the State that both are non-issues.

Conclusion

[24] Reed's state-law claims against White and Chaney are unauthorized under the ITCA. Reed was not deprived of any federal right or immunity, and, accordingly, his claims under 42 U.S.C. § 1983 are without merit. The trial court did not err when it found that there are no genuine issues of material fact and that White and Chaney are entitled to judgment as a matter of law. The trial court correctly awarded summary judgment to White and Chaney on all claims. We affirm.

[25] Affirmed.

Bailey, J., and Robb, J., concur.