

[DO NOT PUBLISH]

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 21-10065

Non-Argument Calendar

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DEAN HIGGINS,

Plaintiff-Appellant,

*versus*

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,  
SCOTT LANDRY,

Defendants-Appellees,

MARK JONES, et al.,

Defendants.

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Appeal from the United States District Court  
for the Northern District of Florida  
D.C. Docket No. 4:19-cv-00308-RH-MAF

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Before ROSENBAUM, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

While in the custody of the Florida Department of Corrections, Dean Higgins had an epileptic seizure that caused him to bite a corrections officer. The department believed that Higgins had used illegal drugs and that his drug use, not his disability, caused him to bite the officer, so it punished him with seven and a half months of disciplinary and administrative confinement and close management. After he left the department's custody, Higgins sued the department for compensatory damages and attorney's fees under the Americans with Disabilities Act and the Rehabilitation Act. After a bench trial, the district court found that Higgins was not entitled to damages because the department was not deliberately indifferent to his statutory rights. We affirm.

#### **FACTUAL BACKGROUND**

Higgins pleaded guilty to lewd and lascivious battery on a minor aged twelve to fifteen years old and served his sentence in the department's custody from June 9, 2017, to May 10, 2019. He has epilepsy and is on the autism spectrum. On the morning of

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September 27, 2018, while detained at DeSoto Correctional Institution, he had an epileptic seizure in a bathroom.

While Higgins convulsed from his seizure, Officer Louinette Charleston, an uncertified trainee, saw him and called for help. Officer Jessica Tirado, a trained and certified correctional officer, responded; when she arrived, Higgins was no longer convulsing. Officer Tirado got him into “the recovery position” to prevent him from harming himself. Higgins regained consciousness, became combative with Officer Tirado, reached out with his mouth, and bit her. While the seizure’s effects on his mental state caused him to bite Officer Tirado, the biting was not part of an involuntary convulsion.

Additional officers arrived, restrained Higgins, and took him to the prison’s medical facility, where he calmed down and received treatment. In treating Higgins, Nurse Lillian Vafi noted in his records that he had no medical history that would explain his behavior that morning. But the department had known about his epilepsy since his first day in prison.

As a result of his behavior during the incident, Higgins was charged with three disciplinary infractions: assaulting an officer (for the biting), disobeying an order, and using illegal drugs. Higgins had not used illegal drugs that morning. But his behavior was consistent with drug use, and Officer Tirado smelled traces of the synthetic marijuana compound K2 in the bathroom during the incident. The disciplinary panel found that Higgins voluntarily used illegal drugs and—either voluntarily or because of this drug use,

not because of a seizure—disobeyed commands and bit Officer Tirado. Higgins’s punishment for these infractions was seven and a half months of disciplinary and administrative confinement and close management.

During the investigation into the incident, both Higgins and his then-fiancée Christina Kraus conveyed false information to Warden Mark Jones, including that responding officers had beaten up Higgins during the incident. Also, before and during the investigation, Higgins’s mother, Sarah Higgins, regularly called to complain about various issues affecting her son’s treatment in prison, including problems related to his epilepsy.

### PROCEDURAL HISTORY

Higgins sued the department for compensatory damages and attorney’s fees under Title II of the Americans with Disabilities Act and section 504 of the Rehabilitation Act.<sup>1</sup>

The district court held a bench trial lasting three and a half days. During Higgins’s case-in-chief, the district court heard testimony from prison officials including Officer Charleston and Warden Jones, medical staff including Nurse Vafi and the prison doctor who treated Higgins, experts in epilepsy and autism, Higgins’s parents, and Higgins. Higgins testified that, right when he first went to prison, he tried K2 once thinking it was regular marijuana. He

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<sup>1</sup> Higgins also sued Warden Jones and four correctional officers, but because none of those claims are at issue on appeal, we do not discuss them further.

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said he “inhaled two times, started feeling weird, and got into a big argument over it with th[e] guy [who] gave [him] the marijuana.” After that, Higgins explained, he never smoked anything at DeSoto Correctional Institution again; he used dipping tobacco, instead.

During the department’s case-in-chief, Warden Jones and three correctional officers—Officer Tirado, Sergeant Scott Landry, and Officer Timothy Johnson—testified. Officer Johnson explained that he had personal experience with seizures through his twenty-seven-year-old son’s medical condition: “There’s nothing about the petit mal, grand mal, or tremor seizures that you can tell me about. I witness it every day. . . . So I can recognize a seizure automatically, sir. I’m not a doctor, but I’ve dealt with this for [twenty-seven] years.” According to Officer Johnson, inmates on K2 “have seizures,” “become combative,” bite, hit, “go crazy,” and have to be subdued, and because the behaviors caused by K2 are “similar” to behaviors caused by seizure conditions, officers would not necessarily be able to tell the difference.

Officer Tirado testified that she was familiar with K2 from her training and from her “experience of coming across K2” on the job, that inmates use K2 “[w]herever they can try and hide from an officer” including in the bathroom and the open dormitory, and that K2 can make users “aggressive” or “laid-back” or leave them “perfectly fine.” She had personal experience with seizures through her father, she said. About the incident, she testified that Higgins was not convulsing when she responded to the call about his seizure, “there was [a] really strong smell of K2” in the

bathroom where she found him, he had “bloodshot” eyes with “dilated” pupils, and he grabbed her hands and pulled and pushed her with “a very strong grip” in what “was essentially a fight.”

Warden Jones, when asked at the end of all witness testimony if he would take the same actions now if he “had it to do all over,” said, “Yes, sir. . . . [F]rom what I’ve seen, I believe [Higgins’s behavior] was from K2.”

Ruling from the bench, the district court found that Higgins had an epileptic seizure and did not use illegal drugs, that he bit Officer Tirado as a result of the seizure, and that none of the prison staff responding to the incident assaulted him or beat him up—they simply restrained him. The district court characterized Higgins as “a poor historian, generally,” and “an especially poor historian” about the events surrounding his seizures, not because he lied about them but because his seizures affected his mental state. The district court also found that, although the disciplinary panel came to the wrong conclusion about Higgins’s drug use, it did so because his behavior was consistent with drug use.

The district court concluded that the defendants did not intentionally discriminate against Higgins: the department “was wrong in concluding that this event was caused by drug use rather than an epileptic seizure, but it wasn’t intentionally wrong and it wasn’t deliberately indifferent.” “Indeed on this record,” the district court continued, “a fact finder could reach a different conclusion.” The district court explained that Warden Jones could have reasonably concluded, based on the facts available to him, that

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Higgins bit an officer and disobeyed an order due to drug use. The district court determined that, although the department's investigation was not "perfect . . . by any means," Warden Jones did "as best he could" sorting out the "crowd noise"—"a whole volume of information" including "untrue assertions"—to arrive at the truth. The district court emphasized that the department was "at most negligent," "not deliberately indifferent."

Higgins moved to clarify the district court's ruling, asking about the deliberate indifference standard and about the department's duty to investigate his disability-based explanation for the biting incident. The district court denied the motion to clarify and issued an opinion on the merits summarizing its oral findings of fact and conclusions of law and directing judgment for the department.

Higgins moved to alter the judgment for the department. He argued that the district court applied the wrong standard for deliberate indifference in disability discrimination cases and that the right standard was an objective test that required the department to investigate further his disability-based explanation for the incident. The disciplinary panel and Warden Jones were deliberately indifferent, Higgins maintained, because they had notice of his seizure condition and did nothing to investigate his defense—they did not even review his medical records.

The district court denied the motion to alter the judgment because Higgins was essentially seeking strict liability and the department was "at most negligent," not willfully blind or

deliberately indifferent. Warden Jones “considered all available information, including [Higgins’s] history of, and later treatment for, epilepsy,” the district court found, and the conclusion that Higgins bit Officer Tirado because he used drugs and not because he had a seizure “was a good-faith conclusion based on consideration of, not blindness to, the available information.”

### DISCUSSION

On appeal, Higgins argues that the district court erred in finding that the department was not deliberately indifferent to his statutory rights. Higgins pursues two theories: actual knowledge and constructive knowledge.<sup>2</sup> Under the actual knowledge theory, he contends that the department knew of his epilepsy and therefore knew that it was substantially likely that he was punished for his disability. Because the department continued to punish him anyway, he says, it was deliberately indifferent as a matter of law. Under the constructive knowledge theory, Higgins argues that the department did not know of his epilepsy because it breached its duty to investigate when he provided it with specific evidence that he was epileptic. The department was willfully blind, he says, so it can be charged with constructive knowledge that it was substantially likely that he was punished for his disability. According to Higgins, because the department continued to punish him after it had this

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<sup>2</sup> We assume, without deciding, that a constructive knowledge theory of liability is available.



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constructive knowledge, it was deliberately indifferent as a matter of law.

We normally review the district court findings of fact after a bench trial for clear error and its conclusions of law *de novo*. *Knight v. Thompson*, 797 F.3d 934, 942 (11th Cir. 2015). But Higgins argues that we should review *de novo* whether the facts established by the record constitute deliberate indifference. He cites *Keohane v. Florida Department of Corrections*, 952 F.3d 1257 (11th Cir. 2020), to argue that a prison official’s deliberate indifference is a question of law, not fact.

In *Keohane*, the majority opinion “appl[ie]d *de novo* review to the district court’s ultimate conclusion whether the objective and subjective elements of a deliberate-indifference claim state an Eighth Amendment violation” because “what the Eighth Amendment means—and requires in a given case—is an issue squarely within the core competency of appellate courts.” *Id.* at 1272 n.8 (ellipses and quotation omitted). But, here, there is no constitutional issue. We are not asked to say what the Constitution means and requires. This is a compensatory damages claim under the Americans with Disabilities Act and the Rehabilitation Act.

“To prevail on a claim for compensatory damages under either the [Rehabilitation Act] or the [Americans with Disabilities Act], a plaintiff must show that a defendant violated his rights under the statutes and did so with discriminatory intent.” *McCullum v. Orlando Reg’l Healthcare Sys., Inc.*, 768 F.3d 1135, 1146–47 (11th Cir. 2014) (footnote omitted). “A plaintiff may prove

discriminatory intent by showing that a defendant was deliberately indifferent to his statutory rights.” *Id.* at 1147. And “[t]o establish deliberate indifference” to a plaintiff’s statutory rights, he “must show that the defendant *knew* that harm to a federally protected right was substantially likely and *failed* to act on that likelihood.” *Id.* (quotations omitted).

Critically, “[w]hether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways . . . .” *Farmer v. Brennan*, 511 U.S. 825, 842 (1994), *quoted in McCullum*, 768 F.3d at 1147. And “[d]isregard of the risk is also a question of fact that can be shown by standard methods.” *Goebert v. Lee County*, 510 F.3d 1312, 1327 (11th Cir. 2007).

These knowledge and disregard-of-risk findings, the *Keohane* majority explained, are “historical facts—*e.g.* what happened, who knew what, how did they respond”—that the district court is “undoubtedly better suited than appellate courts to make” and that are “entitled to deference.” 952 F.3d at 1272 n.8 (quoting, as examples of historical facts, the same language from *Farmer*, 511 U.S. at 842, and *Goebert*, 510 F.3d at 1327). So, we will give deference to the district court’s findings of historical fact.

Here, after a three-and-a-half day bench trial, the district court found that the department did not know that harm to Higgins’s disability rights was substantially likely. The district court’s did-not-know finding is entitled to deference because Higgins’s actual knowledge theory rests on the flawed premise that the

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department's knowledge of his disability equates to its knowledge of a substantial likelihood that he was punished because of his disability. This theory ignores that an epileptic inmate could use illegal drugs and then experience seizure-like symptoms stemming from the drug use. If an epileptic inmate, high on drugs, bit an officer and disobeyed commands, then punishing him for his drug-related misconduct would not violate his statutory rights—even if punishing him for the biting and disobedience would violate his rights had he not done drugs and instead suffered from epileptic seizures causing the conduct. As the department puts it, “[k]nowledge of a seizure disorder is not the same as knowledge of a substantial likelihood of harm to a federally protected right. Inmates may be punished for misconduct, especially misconduct unrelated to the disability.” *See Kornblau v. Dade County*, 86 F.3d 193, 194 (11th Cir. 1996) (“The purpose of the [Americans with Disabilities] Act is to place those with disabilities on an equal footing, not to give them an unfair advantage.”).

The trial record amply supports the district court's finding that the department did not know of a substantial likelihood of harm to Higgins's Americans with Disabilities Act and Rehabilitation Act rights. Warden Jones testified that he believed that Higgins was punished for his drug use and resultant misconduct, not for his disability. The district court credited Warden Jones's testimony and found that “there were facts from which [he] could reasonably conclude” that drug use caused Higgins's behavior because “the events that were seen and reported were consistent with drug

use.” Officer Johnson’s testimony about the similarities in the behaviors caused by K2 and those caused by seizure conditions supported this finding. And the record showed: Higgins used K2 in prison and then “got into a big argument”; inmates on K2 can get “combative” and “aggressive”; and Higgins was “combative,” “not . . . convulsive,” when, with “bloodshot” eyes and “dilated” pupils, he bit Officer Tirado in a bathroom that, to her, “really strong[ly] smell[ed] of K2.” As the district court explained, from these facts, it was reasonable for Warden Jones and the disciplinary panel to conclude that Higgins’s seizure was caused by drug use and not his disability.

As to Higgins’s constructive knowledge theory, it depends on the department’s willful blindness to his disability. But the district court found that Warden Jones “considered all available information” and thus was not willfully blind. This finding is also entitled to deference.

Warden Jones testified that before he approved Higgins’s punishment for the disciplinary infractions, he knew that Higgins claimed to have epilepsy and to have suffered an epileptic seizure in the bathroom. Warden Jones also stated that in deciding whether to approve the punishment, he reviewed the officers’ incident reports, the use of force report, videos of the incident, the disciplinary panel’s written basis for its decision, witness statements, an email from Kraus stating that Higgins “ha[d] a long history of seizures” and that officers had “beaten him up thinking he was on drugs,” and a statement from the medical unit that Higgins

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“did not have a seizure that day” but “was treated for a drug overdose.” And Warden Jones testified that he spoke with Higgins’s mother about the incident and that “[w]hensoever [he] received information, [he] provided it to the appropriate department and made appropriate reports.” This evidence supports the district court’s finding that the department considered and rejected epilepsy as a reason for the incident and was not willfully blind to Higgins’s disability.

### CONCLUSION

Because the district court found that the department did not know that harm to Higgins’s disability rights was substantially likely, and that the department was not willfully blind to his disability, and these findings were amply supported by the record and entitled to deference, we affirm the district court’s judgment for the department on Higgins’s Americans with Disabilities Act and Rehabilitation Act claims.

**AFFIRMED.**