UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of November, two thousand and twenty-six.

Present:

DENNIS JACOBS
RICHARD C. WESLEY,
EUNICE C. LEE,
Circuit Judges.

VINCENT S. LONG,

Plaintiff-Appellant,

v. 24-42

ANTHONY J. ANNUCCI, COMMISSIONER OF NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION; NUNZIO DOLDO, SUPERINTENDENT, CAPE VINCENT CORRECTIONAL FACILITY; MICHELLE NITSCHKE, COUNSELOR, CAPE VINCENT CORRECTIONAL

FACILITY; ALSON TAYLOR, ASAT COUNSELOR, CAPE VINCENT CORRECTIONAL FACILITY; DAVID DINELLO, REGIONAL MEDICAL DIRECTOR, CAPE VINCENT CORRECTIONAL FACILITY,

Defendants-Appellees,

M. MONTROY, DEPUTY SUPERINTENDENT OF PROGRAMS, CAPE VINCENT CORRECTIONAL FACILITY; L. MOORE, HEAD COUNSELOR, CAPE VINCENT CORRECTIONAL FACILITY; L. SCHABER, NURSE ADMINISTRATOR, CAPE VINCENT CORRECTIONAL FACILITY; JOHN MCLAUGHLIN, DEPUTY SUPERINTENDENT OF PROGRAMS AT CAPE VINCENT CORRECTIONAL FACILITY/ SUPERINTENDENT, RIVERVIEW CORRECTIONAL FACILITY,

Defendants.[*]

For Plaintiff-Appellant: C. Mitchell Hendy, Mayer Brown LLP, Los Angeles, CA.

For Defendants-Appellees: Sean P. Mix, Assistant Solicitor General, Barbara D. Underwood, Solicitor General, Victor Paladino, Senior Assistant Solicitor General, *for* Letitia James, New York State Attorney General, Albany, NY.

Appeal from the United States District Court for the Northern District of New York (Sharpe, *J.*).

[*] The Clerk of Court is respectfully directed to amend the caption as set forth above.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment is **AFFIRMED IN PART, AND IN PART VACATED AND REMANDED**.

Plaintiff-Appellant Vincent S. Long appeals from a decision of the United States District Court for the Northern District of New York granting summary judgment to the Defendants-Appellees ("Defendants") on Long's claims under 42 U.S.C. § 1983, Title II of the Americans with Disabilities Act ("ADA"), and Section 504 of the Rehabilitation Act. Long asserted claims against several New York State Department of Corrections and Community Supervision ("DOCCS") officers and employees based on events that occurred between 2014 and 2016, when Long was incarcerated at Cape Vincent Correctional Facility ("Cape Vincent").

Only three sets of claims are at issue in this appeal: (1) Long's Eighth Amendment medical indifference claim against Dr. David Dinello; (2) Long's Eighth Amendment conditions of confinement claim against Cape Vincent Superintendent Nunzio Doldo, and Cape Vincent counselors Michelle Nitschke and Alson Taylor; and (3) Long's ADA and Rehabilitation Act claims against DOCCS Commissioner Anthony J. Annucci. We assume familiarity with the underlying facts, the procedural history of the case, and the issues on appeal, to which we refer only as necessary to explain our decision.

I. Background

In spring 2014, Long was incarcerated at Cape Vincent, a facility that offers both Alcohol and Substance Abuse Treatment ("ASAT") and Aggression Replacement Treatment ("ART") programming. Long had to complete ASAT and ART programs in order to qualify for early release.

After experiencing "occasional headaches, chronic low back pain, and pain in both feet," Long began to see Dr. Manual Palao for treatment. App'x at 341. After Long informed the doctor about his history of plantar fasciitis, Palao diagnosed him with "severe osteoarthritis," "moderate degenerative changes to the lower back lumbar area," and "plantar fasciitis." *Id.* at 341–42. From September 2014 until March 2015, Palao sent four requests to Dr. Dinello, the Regional Director for DOCCS's Watertown Hub, seeking specialized orthopedic care (namely, an orthopedics consultation and custom orthotic footwear) for Long. Dinello "defer[red]" each request, instead recommending that Long try alternative means such as physical therapy and insoles before more "advanced" treatment. *Id.* at 342–46.

In light of Long's ongoing medical issues, DOCCS medical staff exempted him from programming. *Id.* at 346. Despite this exemption, in June 2015, Long was moved to Cape Vincent's ASAT dormitory to participate in the ASAT program. Long says that when housed in the ASAT dormitory, he had to walk considerable distances "for daily

meals and medication needs." *Id.* at 395. Long was moved out of the ASAT dormitory in August 2015.

On February 2, 2016, Long "submitted a request for reasonable accommodation." *Id.* at 336–38, 359. He stated that he "[w]ould like to be able to [p]articipate in ASAT[,] ART[,] and . . . other early release programs" in the same manner as "all other inmates," and asked for "[7- or 8-inch] high lace up, soft soled boots," "[o]rthotics," "[f]ull sole lift of 5/8 [of an inch] on right boot," and a "[s]horter walking distance to . . . medication, [dining], [l]aw [l]ibrary, [and r]eligious [s]ervices." *Id.* at 337, 359.

The next day, DOCCS transferred Long to the Cape Vincent infirmary "where he was given access to handicap[-]accessible facilities with grab bars, high commodes, [and] other accommodations[] to address his mobility issues." *Id.* at 360. But DOCCS denied Long's requests for specific boots and orthotics because those requests had "previously [been] denied by medical"; for that reason, Long alleges he was unable to attend programming while he was in the infirmary. In August 2016, he was transferred to Wyoming Correctional Facility, "a handicap-accessible facility"; he was released from custody the following year. *Id.* at 360.

II. Discussion[1]

A. Eighth Amendment Medical Indifference Claim

Long first argues that the district court "misapplied the subjective standard" to his medical indifference claim against Dinello, which was based on the latter's four deferrals of Palao's recommendations. Appellant's Br. at 24 (bold omitted).

"[T]o establish an Eighth Amendment claim arising out of inadequate medical care, a prisoner must prove 'deliberate indifference to his serious medical needs.'" *Chance v. Armstrong*, 143 F.3d 698, 702 (2d Cir. 1998) (alteration omitted) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). "The standard of deliberate indifference includes both subjective and objective components." *Id.* With respect to the subjective component, the plaintiff must show "at a minimum, 'culpable recklessness.'" *Darby v. Greenman*, 14 F.4th 124, 128 (2d Cir. 2021) (quoting *Charles v. Orange County*, 925 F.3d 73, 87 (2d Cir. 2019)).

The district court held that Long failed to establish any genuine issue of material fact as to the subjective element of his claim because "no reasonable jury could conclude that Dinello possessed a culpable state of mind." Spec. App'x at 11. We agree. As the district court noted, Long did "not dispute that Dinello believed that his [second and

[1] "We review *de novo* a district court's decision to grant summary judgment, construing the evidence in the light most favorable to the party against whom summary judgment was granted and drawing all reasonable inferences in that party's favor." *Bey v. City of New York*, 999 F.3d 157, 164 (2d Cir. 2021). "Summary judgment is appropriate only if 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a)).

third deferrals in October and December 2014] were reasonable and medically justifiable." *Id.* at 12 (citing App'x at 344–45, 462–63). Long did not point to any specific evidence in the record to show that Dinello's deferrals in September 2014 or March 2015 were any different. The September 2014 deferral, of course, happened before the ones where—all agree—Dinello believed that his approach was medically sound. And Palao himself—the doctor who recommended the more advanced treatment—attested that "physical therapy was an acceptable method of treating [Long's] condition" and that throughout Long's time at Cape Vincent, he "was timely provided with the standard and accepted treatments" for his condition. App'x at 308, 315.

We therefore affirm the district court's grant of summary judgment to Dinello on Long's Eighth Amendment deliberate indifference claim.

B. Eighth Amendment Conditions of Confinement Claim

Long next argues that the district court erred in determining that he failed to establish the "objective" requirement of his Eighth Amendment conditions of confinement claim against Nitschke, Taylor, and Doldo. Appellant's Br. at 36. We need not reach that question, however, because—as the Defendants argued both before the district court and on appeal—Long failed to show any genuine issue of material fact as to whether those defendants were personally involved in any deprivation.[2] *See Tangreti*

[2] "We may affirm summary judgment on any ground supported by the record, even if it is not one on which the district court relied." *McElwee v. County of Orange*, 700 F.3d 635, 640 (2d Cir. 2012).

v. Bachmann, 983 F.3d 609, 618 (2d Cir. 2020) (holding that to establish a constitutional claim under section 1983, a plaintiff must show "that each Government-official defendant, through the official's own individual actions, has violated the Constitution" (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009))).

Both Nitschke and Taylor submitted declarations attesting that they had no role in the decision to transfer Long to the ASAT dormitory and lacked the authority to move him out of it. Long offered no specific evidence—as opposed to conclusory statements—refuting that showing. Doldo's role was limited to directing the Nurse Administrator at Cape Vincent to investigate Long's grievances and to affirm the Inmate Grievance Review Committee's responses. Long's assertions to the contrary are conclusory. And while Long cites case law stating that "personal involvement can be found where a 'supervisory official . . . was grossly negligent in managing subordinates,'" Appellant's Rep. Br. at 8 (alteration in original) (quoting *Williams v. Smith*, 781 F.2d 319, 323 (2d Cir. 1986)), we have more recently clarified that to establish a defendant's personal involvement, "it is not enough . . . to show that [a defendant] was negligent, or even grossly negligent, in her supervision of [other] officers," *Tangreti*, 983 F.3d at 620.

We therefore affirm the district court's grant of summary judgment to Nitschke, Taylor, and Doldo on Long's conditions of confinement claim.

C. ADA and Rehabilitation Act Claims[3]

Finally, Long argues that the district court applied the "wrong . . . framework" in analyzing his ADA and Rehabilitation Act claims. Appellant's Br. at 39 (bold omitted). We agree.

To establish a violation of the ADA and Rehabilitation Act, Long was required to show that he "was denied the opportunity to participate in or benefit from defendants' services, programs, or activities, or was otherwise discriminated against by defendants, by reason of h[is] disability."[4] *Dean v. Univ. at Buffalo Sch. of Med. & Biomed. Scis.*, 804 F.3d 178, 187 (2d Cir. 2015) (internal quotation marks and citation omitted). We have held that "[a] defendant is 'entitled to summary judgment only if the undisputed record reveals that the plaintiff was accorded a plainly reasonable accommodation.'" *Wright v. N.Y. State Dep't of Corr.*, 831 F.3d 64, 73 (2d Cir. 2016) (some internal quotation marks omitted) (quoting *Dean*, 804 F.3d at 189).

Long's February 2016 request identified several accommodations. By moving Long to the infirmary, DOCCS provided some of those accommodations, such as grab bars and higher toilets, but not others, namely, specific "boots" and "[o]rthotics." App'x

[3] Because the requirements to establish claims under Title II of the ADA and Section 504 of the Rehabilitation Act "are generally equivalent, we analyze such claims together." *Dean v. Univ. at Buffalo Sch. of Med. & Biomedical Scis.*, 804 F.3d 178, 187 (2d Cir. 2015).

[4] Plaintiffs asserting claims under the ADA and Rehabilitation Act must also show that they are "qualified individual[s] with a disability" and that the defendants are "subject to" the Acts. The parties do not dispute that both of those requirements are met here.

at 337. Long's request stated that the footwear was needed to access several specific prison programs, including the ASAT and ART programs required for his early release. *Id.* at 337–38.

The district court found that Commissioner Annucci was entitled to summary judgment because the accommodations that DOCCS afforded were "plainly reasonable." Spec. App'x at 22. We disagree. To be sure, a reasonable accommodation "need not be 'perfect'" or even "the one 'most strongly preferred' by the []plaintiff." *Dean*, 804 F.3d at 189 (quoting *Noll v. Int'l Bus. Machs. Corp.*, 787 F.3d 89, 95 (2d Cir. 2015)). But "[a] reasonable accommodation must provide *effective* access to prison activities and programs." *Wright*, 831 F.3d at 73 (emphasis added); *see Dean*, 804 F.3d at 189 ("The hallmark of a reasonable accommodation is effectiveness." (citing *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 400 (2002))). Long sought accommodations to enable him to access early release programming at the infirmary; he asserts that the accommodations offered by DOCCS did not do that.

Of course, that does not mean that DOCCS was necessarily required to provide Long the exact accommodations he requested. Unless the accommodations were plainly reasonable, the district court was required to use the burden-shifting applied in ADA and Rehabilitation Act cases, including in the prison context. *See Wright*, 831 F.3d at 76. Under that framework, "the plaintiff 'bears the initial burdens of both production and

persuasion as to the existence of an accommodation' that is 'facially reasonable.'" *Id.* (alteration omitted) (quoting *Dean*, 804 F.3d at 190).

The district court determined that Long failed to satisfy his initial burden because he "adduce[d] no evidence that it was facially reasonable for him to attend early-release programming while living in the infirmary and receiving medical treatment."[5] Spec. App'x at 24. In so ruling, the court misconstrued the inquiry at this initial stage. Long needed to show only that his request for footwear was facially reasonable because it would "allow [him] meaningful access to prison services, programs, and activities." *See Wright*, 831 F.3d at 76. The record suggests that Long had used such footwear during an earlier period of incarceration and experienced substantial pain when he ambulated without it.[6] *See* App'x at 389-90. Based on the record before us, Long satisfied his "light burden" at the first step. *See Dean*, 804 F.3d at 190.

[5] The district court also framed Long's request for boots and orthotics as a "request for specific medical treatment and decisions" that was not actionable under the ADA and Rehabilitation Act under our decision in *Tardif v. City of New York*, 991 F.3d 394 (2d Cir. 2021). Spec. App'x at 23. We announced no such broad bar in *Tardif*. In fact, we distinguished claims raising issues about whether a plaintiff was "denied . . . services *because* she has a disability" (which were actionable) from those in which the issue was "solely . . . whether [a plaintiff] received adequate medical treatment in [state] custody *for* her disability" (which were not). *Id.* at 405. This case is different: Long does not allege that DOCCS violated the ADA and Rehabilitation Act by denying him soft-soled boots and orthotics because those things were required for his medical care. Instead, he asserts that DOCCS's denial of those things prevented him from accessing prison services and programs, including those required for his early release.

[6] The fact that DOCCS later approved Long's request for orthotic shoes in May 2016—or several months before he was transferred out of the infirmary—supports the facial reasonableness of the proposed accommodation. *See* App'x at 352.

At the second step of the framework, the burden of persuasion shifts to DOCCS to rebut the reasonableness of Long's proposed accommodations. *Wright*, 831 F.3d at 76. To do that, the defendant must show that the proposed accommodations would cause it an "undue hardship." *Id.* (quoting *Dean*, 804 F.3d at 190). The district court determined that "even if it was facially reasonable for Long to attend programming while at the infirmary, DOCCS'[s] response to Long's request was plainly reasonable" because DOCCS assessed how to accommodate Long's "medical and programming needs" after moving him into the infirmary. Spec. App'x at 24. However, a defendant must show that the proposed accommodations would cause *undue hardship*. *See Wright*, 831 F.3d at 76. We vacate the grant of summary judgment and remand for the district court to analyze that step in the first instance.[7]

Of course, expenditures alone do not define what an undue hardship is; administrative and safety concerns are weighty as well. Institutions like prisons, hospitals, and schools have interests in maintaining good order. In prisons, which "are unique environments," "administrators are well suited to determine whether an

[7] The Defendants did not argue, either here or below, that granting Long's request would impose an "undue hardship" upon it. App'x at 383; Appellees' Br. at 41–47.

Further, "[b]ecause the district court found [Long] failed to establish a prima facie [claim], it did not have occasion to address whether the Eleventh Amendment prohibits [Long's] money damages claims against [Annucci] in [his] official capacit[y]." *Dean*, 804 F.3d at 193; *see* Spec. App'x at 21 n.8. "As is our usual practice, we leave it to the district court to determine in the first instance whether [Annucci is] entitled to immunity under the Eleventh Amendment as to the ADA and Rehabilitation Act claims." *Dean*, 804 F.3d at 193.

accommodation would undermine prison 'security and order' or hinder facilities from 'operating . . . in a manageable fashion.'" *See id.* at 78 (quoting *Pierce v. County of Orange*, 526 F.3d 1190, 1217 (9th Cir. 2008)). Courts therefore should "exhibit judicial restraint" when reviewing claims that touch on prison administration. *See id.* at 79.

Accordingly, one hardship to be considered upon remand is the disruption of normal administrative processes within DOCCS, including processes related to the provision of medical care. *See* App'x at 336 (DOCCS's denying Long's requests for boots and orthotics on the grounds that those accommodations had "previously [been] denied by medical"). Whether DOCCS can show that it would have experienced "undue" hardship here is a question for the district court to consider in the first instance.

For the reasons stated above, we **AFFIRM** the judgment of the district court with respect to Long's Eighth Amendment claims under 42 U.S.C. § 1983 against Dinello, Nitschke, Taylor, and Doldo; **VACATE** the judgment of the district court with respect to Long's ADA and Rehabilitation Act claims against Annucci; and **REMAND** this case to the district court for further proceedings consistent with this opinion.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk