

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

---

**MAY 4 2001**

**PATRICK FISHER**  
Clerk

JAMES MICHAEL STUART,

Plaintiff-Appellant,

v.

DELANA GOSS, Sheriff; DAN  
GARBER; CLINT CARPENTER;  
HEATH CLINTON; CHRIS BOLES;  
BRIAN CATCHER; JEFF PHILLIPS;  
CHAD McCARTER; CLAY  
BUCKNER; PAUL UNKNOWN, a/k/a  
Richard Paul Horlick; JACK  
SMITHSON,

Defendants-Appellees.

No. 00-7121

(D.C. No. 99-CV-121-B)  
(E.D.Okla.)

---

**ORDER AND JUDGMENT** \*

---

Before **HENRY** , **BRISCOE** and **MURPHY**, Circuit Judges.

---

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of

---

\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff James Michael Stuart, a state prisoner appearing pro se, appeals the district court's dismissal of his 42 U.S.C. § 1983 civil rights action as frivolous. We conclude the appeal is frivolous and dismiss pursuant to 28 U.S.C. § 1915A(b)(1).

Stuart filed his § 1983 civil rights action on March 18, 1999. He alleged that (1) he was denied adequate medical treatment; (2) he was denied visitations and the right to send or receive mail; and (3) his mail was delivered to him opened and access to his attorney was denied. On September 29, 2000, the district court granted defendants' motion for summary judgment and dismissed the action as frivolous.

We review a district court's dismissal of a complaint as frivolous for an abuse of discretion. See Schlicher v. Thomas, 111 F.3d 777, 779 (10th Cir. 1997). The district court did not abuse its discretion in dismissing Stuart's complaint as frivolous. The court carefully considered each of Stuart's claims and found that Stuart's complaint was without merit “in that it lack[ed] an arguable basis either in law or fact,” citing Nietzke v. Williams, 490 U.S. 319 (1989), and Yellen v. Cooper, 828 F.2d 1471 (10th Cir. 1987). Order at 7.

The appeal is DISMISSED as frivolous. Stuart is reminded that he remains

obligated to continue making partial payments of the appellate filing fee pursuant to 28 U.S.C. § 1915(b). The mandate shall issue forthwith.

Entered for the Court

Mary Beck Briscoe  
Circuit Judge