

**UNITED STATES COURT OF APPEALS**

**AUG 29 2002**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

BRET S. KLEIN,

Plaintiff - Appellant,

v.

STEVE McCLAURY; ANTHONY  
CAROCHI; CHRIS BARR; NANCY  
MICHAELS; KATIE BAXTER;  
GARY BARDESSONA; STEVE  
ROSSI; JANELLE GIGANTI; and  
JOE PAOLINO, in their official  
capacities,

Defendants - Appellees.

No. 02-1138

(D.C. No. 99-Z-1692)

(D. Colorado)

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**ORDER AND JUDGMENT\***

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Before **KELLY, McKAY**, and **MURPHY**, Circuit Judges.

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

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 is a pro se state prisoner § 1983 civil rights appeal. In 1999, Mr. Klein sought monetary damages, declaratory, and injunctive relief for alleged constitutional violations associated with prison disciplinary proceedings instituted against him. In December 1999, the district court dismissed the claims without prejudice to the extent that they requested expungement of disciplinary action from his record, ruling that such claims should have been brought pursuant to § 2254. To the extent that Mr. Klein sought monetary and injunctive relief, the district court dismissed the complaint as legally frivolous.

Mr. Klein filed three motions to reconsider, all of which the district court denied. We affirmed the district court's decision on appeal. Klein v. McClaury, No. 00-1065, 2000 WL 1005238 (10th Cir. July 20, 2000). On March 4, 2002, Mr. Klein filed a motion seeking relief from judgment. The district court denied the motion as moot. Mr. Klein appeals to this court.

As detailed above, the district court originally dismissed Mr. Klein's claims on December 15, 1999. Then, the district court thrice denied Mr. Klein's motions to reconsider. We subsequently affirmed the dismissal. Id. The present action is moot. After a thorough review of the brief and the record, and for substantially the same reasons set forth in the district court's March 6, 2002, Minute Order, we hold that no relief is available to Mr. Klein pursuant to § 1983.

The decision of the trial court is **AFFIRMED**. Appellant's motion to

proceed without prepayment of the filing fee is **GRANTED**. We remind Appellant that he must continue making partial payments on court fees and costs previously assessed until such have been paid in full.

Entered for the Court

Monroe G. McKay  
Circuit Judge