

UNITED STATES COURT OF APPEALS

Filed 6/26/96

TENTH CIRCUIT

PHILLIP CORDOVA,

Plaintiff - Appellant,

vs.

LAWRENCE BARRERAS,

Defendant - Appellee.

No. 95-2180
(D.C. No. CIV-95-819-JP)
(D.N.M.)

ORDER AND JUDGMENT*

Before SEYMOUR, Chief Judge, KELLY, and LUCERO, Circuit Judges.**

Mr. Cordova, an inmate appearing pro se and in forma pauperis, appeals from the dismissal of his Motion for Injunction and/or Mandamus seeking transfer to another correctional facility. He contends that his transfer to an out-of-state facility was a result of racial discrimination. The district court treated the motion as a complaint and dismissed it pursuant to 28 U.S.C. § 1915(d) because it was obvious that the claim was

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This 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.

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

barred by res judicata and therefore without merit. See Yellen v. Cooper, 828 F.2d 1471 (10th Cir. 1987). We review the district court's dismissal for an abuse of discretion. Denton v. Hernandez, 504 U.S. 25, 33 (1992). Mr. Cordova attacked his transfer in a separate prior action on different grounds. Res judicata precludes the litigation of issues that were or could have been raised in the prior action. Klein v. Zavaras, 80 F.3d 432, 434 (10th Cir. 1996). The district court acted well within its discretion.

AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge