

UNITED STATES COURT OF APPEALS

Filed 6/20/96

TENTH CIRCUIT

NATHANIEL F. MURPHY, JR.,

Plaintiff - Appellant,

v.

KIMBERLY BRUSUELAS, Assistant
Public Defender; BERNALILLO
COUNTY PUBLIC DEFENDER,

Defendants - Appellees.

No. 95-2255
(D. Ct. No. CIV-95-592-JP)
(N. Mex.)

ORDER AND JUDGMENT*

Before TACHA, BALDOCK, and BRISCOE, Circuit Judges.

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.

This pro se appeal is from two orders of the district court. The first order of the district court dismissed plaintiff's civil rights action which the district court construed as

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

an action brought pursuant to 42 U.S.C. § 1983 and, further, construed plaintiff's claim for injunctive relief as a writ of habeas corpus and dismissed that action directing the clerk of the court to provide plaintiff with forms for filing a petition under 28 U.S.C. § 2254. That order was filed on June 29, 1995. On July 21, 1995, plaintiff filed a motion which was construed as a motion for reconsideration. The order denying that motion was entered on October 11, 1995. The notice of appeal was filed November 8, 1995. Because the motion to amend the original order was not served within ten days of the final order of the district court, that motion does not extend the time in which to file an appeal. Fed. R. App. P. 4(a)(4); Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 113 S. Ct. 89 (1992). We construe the motion as a motion brought pursuant to Federal Rule of Civil Procedure 60(b), which allows us to review only the district court's denial of the motion to reconsider and not the underlying judgment. Id. We review for an abuse of discretion. White v. American Airlines, Inc., 915 F.2d 1414, 1425 (10th Cir. 1990).

The district court denied the motion for reconsideration on the grounds that the district court did not err in finding that a public defender undertaking a defense does not act under color of state law for the purposes of 42 U.S.C. § 1983 and that the complaint did not state a claim because no conspiracy between the defendant and the prosecutor was supported with adequate factual allegations. We have reviewed the record, the briefs, and the district court opinions and find that the district court did not abuse its discretion in

denying the motion for reconsideration. AFFIRMED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT,

Deanell Reece Tacha
Circuit Judge