

UNITED STATES COURT OF APPEALS

Filed 10/4/96

TENTH CIRCUIT

CHRISTOPHER C. MOORE,

Plaintiff-Appellant,

v.

PAGE TRUE, Warden; KATHLEEN
HAWK, Director of Bureau of Prisons,

Defendants-Appellees.

No. 96-3206
(D.C. No. 96-3197-GTV)
(D. Kan.)

ORDER AND JUDGMENT*

Before TACHA, BALDOCK, and BRISCOE, 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 appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. Therefore, the case is ordered submitted without oral argument.

Plaintiff Christopher Moore appeals the district court's dismissal of his civil action for damages brought pursuant to 28 U.S.C. § 1331. Plaintiff was permitted to file this action without prepayment of fees. In this Bivens action, plaintiff sought damages from the two named defendants, the Warden of the United States Penitentiary at Leavenworth

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

and the Director of the Bureau of Prisons. Specifically, plaintiff claimed his continued confinement in administrative segregation in holdover status was a result of defendants' personal racial vendetta and that it was excessive and constituted cruel and unusual punishment.

The district court dismissed the complaint because plaintiff failed to present any cognizable constitutional claim to support a Bivens action. To establish a Bivens cause of action, a party must have some evidence to support finding that a federal agent, acting under color of such authority, violated some cognizable constitutional right of plaintiff. Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). See Seigert v. Gilley, 500 U.S. 226 (1991) (alleged conduct must rise to level of constitutional violation to support Bivens claim).

Plaintiff moved for reconsideration, which was denied. The district court denied plaintiff's request to proceed in forma pauperis on appeal, finding the appeal to be legally frivolous and not taken in good faith. Plaintiff has filed a motion with this court for leave to proceed on appeal without prepayment of costs. We dismiss the complaint as frivolous and deny plaintiff's request to proceed in forma pauperis on appeal.

On appeal, plaintiff raises issues involving double jeopardy under the Fifth Amendment, excessive punishment under the Eighth Amendment, and due process violation under the Fourteenth Amendment.

We have examined plaintiff's appellate brief, all of the pleadings, and the record on appeal, and find that the district court did not err in dismissing plaintiff's complaint. We dismiss this appeal as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

Plaintiff's request to proceed in forma pauperis on appeal is DENIED and this

appeal is DISMISSED. The mandate shall issue forthwith.

Entered for the Court

Mary Beck Briscoe
Circuit Judge