

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

AUG 22 2000

PATRICK FISHER
Clerk

OLAF PETER JUDA,

Plaintiff-Appellant,

v.

RAYMOND HAMILTON, Assistant
U.S. Attorney, District of New
Mexico; JOHN S. SANCHEZ, United
States Marshal; RUDY ESTRADA,
Warden, Santa Fe Detention Center,

Defendants-Appellees.

No. 99-2371

D.N.M.

(D.C. No. CIV-99-942-BB)

ORDER AND JUDGMENT*

Before **BALDOCK, HENRY, and LUCERO**, Circuit Judges.**

Mr. Juda, appearing pro se, appeals the district court's sua sponte dismissal of his complaint filed pursuant to Bivens v. Six Unknown Named Agents 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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

** 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)(2); 10th Cir. R. 34.1(G). The case is, therefore, ordered submitted without oral argument.

Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging that the defendants violated his First and Eighth Amendment rights. Mr. Juda sought money damages. The district court dismissed Mr. Juda's complaint in accordance with 28 U.S.C. § 1915(e)(2)¹ and Fed. R. Civ. P. 12(b)(6).² Mr. Juda filed a motion to reconsider, which the district court also denied. The district court denied Mr. Juda's motion to proceed and in forma pauperis on appeal; Mr. Juda has filed a renewed application to proceed in forma pauperis before this court.

Presently incarcerated in a federal correctional institution in California, Mr. Juda alleges in his complaint that the defendants, in retaliation for his filing of a complaint criticizing the conditions of his detention, (1) conspired to prevent his prompt return to detention in California after an evidentiary hearing in New Mexico, and (2) conspired to prevent the return of his legal materials during his two month stay in the New Mexico center. Mr. Juda further alleged he was exposed to environmental tobacco smoke (ETS), and he was harassed by other inmates. He alleged that after complaining he was placed in segregation where he was permitted only three showers per week, one hour of exercise during his entire stay, and denial of hygiene supplies, comfortable bedding, office supplies, a

¹ We review the district court's § 1915(e) dismissal for an abuse of discretion. See McWilliams v. Colorado, 121 F.3d 573, 574-75 (10th Cir. 1997).

² We review the district court's Rule 12(b)(6) dismissal for failure to state a claim de novo. See Beck v. City of Muskogee Police Dep't, 195 F.3d 553, 556 (10th Cir. 1999).

“federal” law library, and adequate medical care. Finally, Mr. Juda complained that the food at the center was “dismal.”

We have thoroughly reviewed Mr. Juda’s brief and motions, the district court’s order, and the entire record before us. The district court cogently addressed each of Mr. Juda’s claims. We conclude that Mr. Juda has failed to make the necessary showing for substantially the same reasons set forth in the district court’s order.

Accordingly, we AFFIRM the district court’s dismissal of Mr. Juda’s complaint, and we AFFIRM the district court’s denial of Mr. Juda’s subsequent motion. Finally, we deny Mr. Juda’s application to proceed in forma pauperis, and remind him of his obligation to pay costs related to this appeal.

Entered for the Court,

Robert H. Henry
Circuit Judge