

UNITED STATES COURT OF APPEALS

**Filed 4/29/96**

TENTH CIRCUIT

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NELSON O. DUARTE,

Plaintiff-Appellant,

v.

UNITED STATES BUREAU OF  
PRISONS; J. MICHAEL QUINLAN,  
Director of FBOP; CLAIR CRIPE,  
General Counsel; CALVIN EDWARDS,  
Regional Director; GARY L. HENMAN,  
Warden; J. HARRELL, Associate  
Warden; E. R. PIERCE, SIS Lieutenant;  
E. W. GEOUGE, Discipline Hearing  
Officer,

Defendants-Appellees.

No. 95-3380  
(D. Kan.)  
(D.C. No. 93-CV-3369)

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**ORDER AND JUDGMENT\***

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Before **ANDERSON**, **BARRETT** and **MURPHY**, Circuit Judges.

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

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata and collateral estoppel.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

appeal. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. This case is therefore ordered submitted without oral argument.

Plaintiff Nelson O. Duarte, a prison inmate, appeals the district court's grant of summary judgment to defendants on his civil rights action brought pursuant to 28 U.S.C. § 1331. In his complaint, Duarte alleges that his constitutional rights were violated by the actions of the defendants during a disciplinary investigation and hearing, following which plaintiff was found guilty of attempted escape. Construed liberally, Duarte alleged that (1) defendants falsely charged him with attempted escape, (2) he was a victim of a retaliatory transfer, (3) defendants refused to investigate his claim that confidential informants had set him up, (4) defendants falsified and withheld evidence, and (5) defendants deprived him of good time credits.

On appeal, Duarte asserts that the district court failed to consider the facts in the light most favorable to him as the nonmoving party and that there are material issues of fact in dispute which preclude the district court's grant of summary judgment.

We review the district court's grant of summary judgment *de novo* and apply the same legal standard used by the district court under Rule 56(c) of the Federal Rules of Civil Procedure. *Eaton v. Jarvis Prods. Corp.*, 965 F.2d 922, 925 (10th Cir. 1992). Summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

Upon careful consideration of the record on appeal, the pleadings, and the parties arguments, we affirm for substantially the reasons stated in the district court's Memorandum and Order dated November 3, 1995.

The judgment of the United States District Court for the District of Kansas is hereby AFFIRMED.

ENTERED FOR THE COURT

Michael R. Murphy  
Circuit Judge